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Recommended Improvements to Montana State Personnel and Labor Relations Systems

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**Final Report to
Governor Ted Schwinden and
the 48th Session of the Montana State Legislature**



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DEPARTMENT OF ADMINISTRATION
PERSONNEL DIVISION



TED SCHWINDEN GOVERNOR

ROOM 130, MITCHELL BUILDING

STATE OF MONTANA

(406) 449-3871

HELENA, MONTANA 59620

The Honorable Ted Schwinden
Governor of the State of Montana
State Capitol Building
Helena, MT 59620

Dear Governor Schwinden:

On behalf of the Personnel and Labor Relations Study Commission, I am pleased to present to you the Study Commission's final report entitled "Recommended Improvements to Montana State Personnel and Labor Relations Systems."

Recognizing that there is no more important single factor in the success of state government programs than the people who run them, the Study Commission, at your direction, has spent the past year reviewing the practices and procedures used to acquire, train, motivate and generally manage state employees. The result is thirty three recommendations for improvement in the areas of collective bargaining, position classification, employee pay, and personnel administration.

We are confident that implementation of these recommendations will assist state agencies in increasing employee job skills, motivation, morale and productivity and generally improve the use of the State's human resources.

Respectfully submitted,

A handwritten signature in cursive script that reads "Francis Bardanoue".

Rep. Francis Bardanoue, Chairman
Personnel and Labor Relations
Study Commission

Enclosure

PERSONNEL AND LABOR RELATIONS STUDY COMMISSIONERS

Chairman

Representative Francis Bardanouve
Democrat from Harlem

Legislative Commissioners

Senator Fred Van Valkenburg,
Democrat from Missoula

Rep. Calvin Winslow
Republican from Billings

Senator Jan Johnson Wolf,
Republican from Missoula

Labor Commissioners

Jerry Driscoll, President
Montana State AFL-CIO
Assistant Business Manager
Laborers Local No. 98, Billings

Richard Ferderer, Secretary-Treasurer
Teamsters Local 45, Great Falls

Tom Schneider, Executive Director
Montana Public Employee Association,
Helena

Private Sector Commissioners

Percy Cline, Staff Manager
Mountain Bell, Helena;
resigned March, 1982

Jean Fitzsimmons, Regional
Director of Personnel,
Burlington Northern Inc.,
Billings; appointed March,
1982 to replace Percy Cline

Nancy Hanson, Vice-President
for Human Resources, First
Northwestern National Bank,
Billings

Don Robinson, Attorney
Law Firm of Poore, Roth,
Robeschon and Robinson, Butte

Executive Branch Commissioners

Marilyn Miller, Executive Assistant
to the Superintendent, Office of
Public Instruction, Helena;
appointed March, 1982 to replace
Ray Shackelford

Dr. LeRoy Schramm, Chief Legal
Counsel, Office of the Commissioner
of Higher Education, Helena

Ray Shackelford, Deputy State
Superintendent, Office of Public
Instruction, Helena; resigned
March, 1982

Gary Wicks, Director
Department of Highways, Helena

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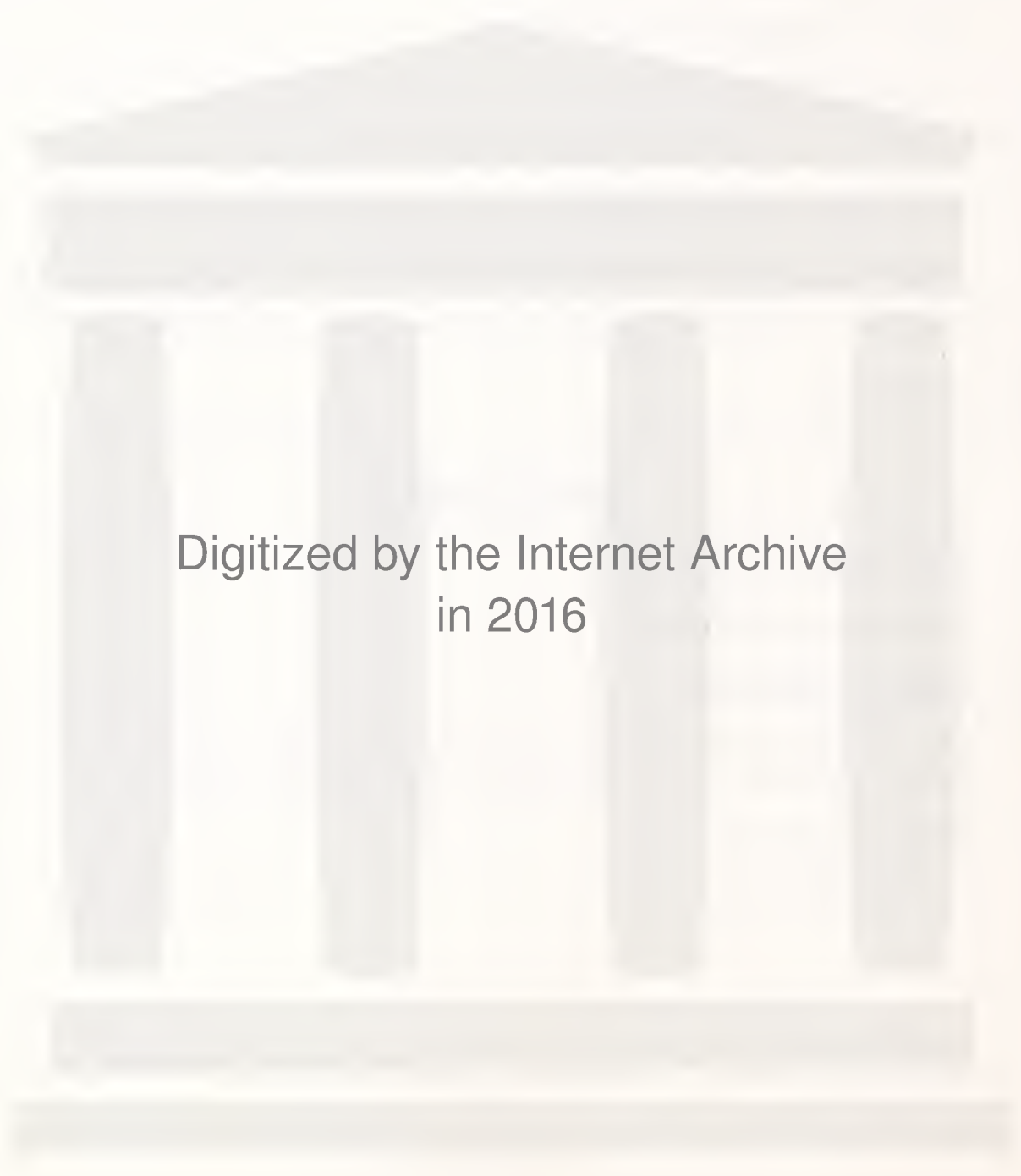
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CHAPTER I

Preface: Study Commission Operations

Governor Ted Schwinden formed the Personnel and Labor Relations Study Commission in October of 1981 to study and make recommendations for improving the state's personnel and labor relations systems. Funds for Study Commission operations were appropriated by the 47th Legislature. Staff was provided by the Personnel Division, Department of Administration.

The Study Commission was charged with developing a final written report for the Governor and 48th Legislature including specific legislative recommendations by December of 1982. To both meet this deadline and adequately consider the issues before it, the Study Commission met as a committee of the whole for a total of fifteen days on ten separate occasions between November of 1981 and November of 1982.

The Study Commission's thirteen members, consisting of legislators, labor leaders, executive branch managers, and private sector personnel and labor relations specialists, contributed their diverse expertise to Commission deliberations and also sought extensive involvement by both in-state and out-of-state experts and by the affected parties of questions under study.

Following is a summary of the types of information obtained for each of the four major issue areas studied by the Commission.

IN ISSUE AREA A – Legislative Involvement in Collective Bargaining – extensive testimony was received from legislative leaders, labor leaders, and the Labor Relations Bureau staff. Outside expert testimony was obtained from Representative Wayne Simoneau, Chairman of Minnesota's Legislative Committee on Employee Relations and Hugh Henderson, Secretary of Wisconsin's Department of Employment Relations. Mr. Henderson provided information on operations of Wisconsin's joint legislative committee on employment relations.

IN ISSUE AREA B – Operations of Montana's Collective Bargaining Laws – extensive testimony was received from labor leaders, members and staff of the Board of Personnel Appeals, state managers, local government managers and Labor Relations Bureau staff. Statutes and practices of other states were also researched.

IN ISSUE AREA C – Position Classification and Employee Pay – an outside review team of three classification and compensation experts (Glen Blahnik from Wisconsin, Ronald Nielsen from Colorado and Richard Hutchinson from Idaho) reviewed and recommended improvements in the state's classification and compensation programs. In addition, two of the most widely used and accepted quantitative classification systems were researched and the feasibility of adapting them or portions of them to Montana's needs was assessed. (Members of the outside review team had experience with both systems and contributed to the assessment.) Compensation practices and principles, particularly pay for performance, was also extensively researched. Finally, state managers were surveyed and testimony was obtained from state employees, labor representatives and other individuals at a special evening hearing.

IN ISSUE AREA D – Increased Productivity Through Improved Personnel Administration – the needs and recommendations of state managers were identified through a survey. Teams of personnel specialists, including Personnel Division staff and personnel specialists from other agencies, were formed to assess various aspects of the state's personnel system and recommend improvements to the Study Commission.

In addition to the above, the Study Commission sought the involvement of interested groups and individuals through such means as maintenance of an extensive mailing list, advance public notice of meetings, distribution of detailed minutes of each meeting, distribution of advance copies of staff reports to major parties of the issues under study, and acceptance of public testimony both orally at each meeting and in writing at any time.

Anyone seeking further information on Study Commission operations or recommendations may contact the Commission Chairman, Representative Francis Bardanoue or the Project Director, Joyce Brown, Personnel Division, Mitchell Building, Helena, MT., 449-3871.

CHAPTER II

SUMMARY OF RECOMMENDATIONS

ISSUE AREA A: LEGISLATIVE INVOLVEMENT IN COLLECTIVE BARGAINING

ADMINISTRATIVE MEASURES TO INCREASE EXECUTIVE/LEGISLATIVE BRANCH COMMUNICATION

Recommendation 1: Administratively implement the following measures:

1. The Department of Administration is to provide early and periodic briefings on the conduct and progress of collective bargaining to the legislative leadership and/or any committees established for that purpose.

Briefings are to consist of: (a) *Prenegotiation*: The broad parameters set for negotiations, anticipated collective bargaining issues, (b) *During negotiations*: Brief summaries of the status of offers and counteroffers; "substantial changes" under discussion regarding wages, employee benefits, personnel management and contract provisions with program policy implications, (c) *Presession*: Negotiated settlements; unresolved issues; progress to date; the fiscal ramifications of proposed settlements and the draft pay plan bill.

2. The State employee pay bill is to be introduced earlier than in previous sessions.

3. The Office of the Legislative Fiscal Analyst/Office of Budget and Program Planning/Department of Administration are to establish a reliable system to calculate the cost of the negotiated settlements and the State employee pay plan in a manner that can be independently verified by all parties. (Vote: passed unanimously)

See Appendix D for the Department of Administration proposal which formed the basis for this recommendation.

AN OPTIONAL MECHANISM FOR ONGOING LEGISLATIVE INVOLVEMENT

Recommendation 2: The mechanism described below for ongoing legislative input into the collective bargaining process is presented without Commission recommendation for the Legislature's consideration.

Establish a joint legislative committee on Employee Compensation with the following features:

1. Composition:

- a. one member appointed by the majority leader of the House;
- b. one member appointed by the majority leader of the Senate;
- c. one member appointed by the minority leader of the House;
- d. one member appointed by the minority leader of the Senate;
- e. the chairman of the Senate Finance and Claims Committee;
- f. the chairman of the House Appropriations Committee;
- g. the Speaker of the House;
- h. the President of the Senate;
- i. two additional members, one appointed by the Senate Committee on Committees and one appointed by the House Appropriations Committee, unless five or more of the first eight members are of the same political party, in which case one of the two additional members shall be appointed by the minority leader of the House and one by the minority leader of the Senate. (This provision provides some balance in committee representation. When both houses of the legislature are controlled by one party, it guarantees that at least four of the ten committee members will be of the minority party.)

2. Duties:

- a. Consult with executive branch negotiators in the form and detail determined by the Committee regarding substantial changes in any existing or new contract provision with an economic impact.
- b. Approve or disapprove economic settlements subject to final approval by the full legislature.
- c. Approve or disapprove the compensation and benefit plans for unorganized employees proposed by the Department of Administration subject to final approval by the full legislature. (Vote: 9-yes, 3-no)

See proposed implementing legislation, LC0078/01, in Appendix B.

ISSUE AREA B: OPERATIONS OF MONTANA'S COLLECTIVE BARGAINING LAWS

OPERATIONS OF THE BOARD OF PERSONNEL APPEALS

Recommendation 3: Amend the Collective Bargaining for Public Employees statute to clarify the starting date of the five-month time limit for a final Board of Personnel Appeals decision on an unfair labor practice case as: "five months after final briefs are submitted to the hearings officer or, if no briefings are submitted, then within five months after the hearing". (Vote: passed unanimously)

See proposed implementing legislation, LC0012/01, in Appendix B.

Recommendation 4: Amend the Collective Bargaining for Public Employees Statute to permit the Board of Personnel Appeals staff to expedite unfair labor practice proceedings by investigating an unfair labor practice complaint and dismissing the charge if it is found unmeritorious subject to review by the Board if a request for a review is made by the charging party within ten days of the staff notice of intent to dismiss. (Vote: passed unanimously)

See proposed implementing legislation, LC0013/01, in Appendix B.

Recommendation 5: Provide both parties to an unfair labor practice charge with the right to disqualify the person designated by the Board of Personnel Appeals to hear the complaint. (Vote: 11-yes, 1-no)

See proposed implementing legislation, LC0117/01 in Appendix B.

Recommendation 6: Provide funds to the Board of Personnel Appeals to provide training in mediation to its staff — \$5,000 was the projected amount needed. (Vote: passed unanimously)

Recommendation 7: Provide funds to the Board of Personnel Appeals to complete an index of its decisions — \$5,000 was the projected amount needed. (Vote: passed unanimously)

Recommendation 8: Amend the statute establishing the Board of Personnel Appeals, 2-15-1705 M.C.A., to give the Board the authority to hire its own staff. (Vote: 10-yes, 2-no)

See proposed implementing legislation, LC0044/01, in Appendix B.

IMPASSE RESOLUTION

Recommendation 9: Amend the Collective Bargaining for Public Employees Act to:

1. require use of mediation before concerted action by either party to a dispute;
2. require a 120 hour (5 day) notice of a concerted refusal to work at any public place or before engaging in any strike, lockout or picket which results in a concerted refusal to work at any public place of employment;
3. provide injunctive relief for a violation of either of these provisions. (Vote: 9-yes, 3-no)

See proposed implementing legislation, LC0074/01, in Appendix B.

Recommendation 10: Amend the Collective Bargaining for Public Employees Act to provide injunctive relief from a strike or work stoppage upon a petition to district court by a public employer where the

court determines that continuation of a strike would pose an imminent danger to the health, safety or welfare of the public, as opposed to inconvenience or discomfort. Injunctive relief automatically triggers compulsory, final-offer arbitration which is binding on both parties including the governing body responsible for appropriating funds. (Vote: 7-yes, 5-no)

See proposed implementing legislation, LC0093/01, in Appendix B.

THE COLLECTIVE BARGAINING PROCESS

Recommendation 11: Administratively move toward a single pre-budget negotiation session for all items (both economic and non-economic items) to increase bargaining flexibility. (Vote: passed unanimously)

HOUSEKEEPING MEASURES TO CLARIFY STATUTORY LANGUAGE, INCREASE CONSISTENCY, AND REDUCE OVERLAPPING JURISDICTION IN COLLECTIVE BARGAINING PROCESSES

Recommendation 12: Amend the Collective Bargaining for Public Employees Act (CBPEA) to clarify the nature of the grandfather protection provided to employees in positions which were contained in bargaining units prior to the effective date of the CBPEA—July 1, 1973 as follows: If on July 1, 1973 (the effective date of the CBPEA) a collective bargaining unit contained a position occupied by an employee who would not be eligible to belong to the unit under the CBPEA (a supervisor) then the employee who occupies that position on the effective date of this amendment (October 1, 1983) may, if he desires remain in the bargaining unit for as long as he continues to occupy the same position or another position which was contained in the unit on July 1, 1973, unless the Board of Personnel Appeals determines that he should be excluded. If the employee leaves a position which on July 1, 1973 was contained in the unit and occupied by an employee who would not be eligible to belong to the unit under the CBPEA (a supervisor), his replacement is excluded from the bargaining unit unless the replacement has, since the effective date of this act (October 1, 1983), continuously occupied a position or positions which were contained in the unit on July 1, 1973. (Vote: 9-yes, 3-no) See proposed implementing legislation, LC0027/01, in Appendix B.

Recommendation 13: Amend the Collective Bargaining for Nurses Act to: (1) establish unfair labor practices for labor organizations representing nurses as well as for health care facilities (employers), (2) establish procedures for adjudicating unfair labor practice charges consistent with procedures under the CBPEA, and (3) make procedures for determining appropriate units and resolving representation questions for nurses more consistent with procedures established by the CBPEA for public employees. (Vote: 7-yes, 4-no)

See proposed implementing legislation, LC0046/01, in Appendix B.
Minority views are presented in Chapter VII.

Recommendation 14: Amend 39-51-2305, MCA, to require the Labor Appeals Board (referred to in statute as the Department of Labor and Industry) to defer to the Board of Personnel Appeals or the National Labor Relations Board for a determination of whether the employer of an applicant for unemployment benefits committed an unfair labor practice that resulted in a labor dispute, work stoppage and the applicant's unemployment for purposes of deciding whether the applicant is entitled to benefits. (Vote: 10-yes, 2-no)

See proposed implementing legislation, LC0076/01, in Appendix B.

ISSUE AREA C: POSITION CLASSIFICATION AND EMPLOYEE PAY

THE CLASSIFICATION SYSTEM

Recommendation 15: Maintain the current classification system and proceed with planned and existing efforts to enhance it by introducing quantitative methods where practical as quickly as time and resources allow. (Vote: passed unanimously.)

Enhancement measures planned by the Personnel Division include:

1. Phased introduction over a two and one-half year period of quantitative methods which will build on strengths of the current system (maintaining the five primary factors of the current factor comparison method) but use the best features of the quantitative Factor Ranking and Hay Guidechart methods. These include:
 - a. Separate but coordinated and consistent point factoring systems for major occupational groups to better meet the needs of each group as found in the Factor Ranking System. Example: Group 1—executive managers, Group 2—professional, administrative and technical employees, Group 3—labor, trades and crafts, Group 4—clerical, office machine operators and technical employees, Group 5—special occupations: physicians, attorneys, teachers, law enforcement.
 - b. Use of classification advisory committees for each occupational group comprised of agency representatives who are employed in, supervise, or are familiar with occupations in the group as found in the Hay Guide Chart Method. These advisory committees are to monitor the development of the factor ranking system prior to its implementation, assist the Personnel Division in evaluating classes, recommend grade levels for classes and assist in allocating positions to classes.
2. Delegation of position classification authority to agencies which demonstrate the capacity to exercise the authority coupled with post-classification audits by the Personnel Division to maintain consistency across agencies.
3. Implementation of these measures with existing staff utilizing staff time saved by the delegation measure.

EMPLOYEE COMPENSATION

Recommendation 16: Establish a non-base-building, pay-for-performance, bonus system for all unorganized employees. For employees within a bargaining unit, the subject of bonus pay shall remain a subject of collective bargaining.

Pay-for-performance funds appropriated by the legislature are to be distributed according to rules adopted by the Department of Administration.

The rules are to include:

1. a specification of the size of bonuses to be distributed (as opposed to a less structured system);
2. a requirement that the bonuses be limited to 20% of the eligible employees to insure that it does not become a blanket pay increase and;
3. a requirement that bonuses be limited to those agencies which have a fully implemented performance appraisal system which meets professional standards established by the Personnel Division. (Vote: 8-yes, 4-no)

Minority views are presented in Chapter VII.

Recommendation 17: Allow different pay plans and matrices for broad occupational groups of employees to better meet the compensation needs of each group but use the same underlying treatment to ensure internal equity. (Vote: passed unanimously)

ISSUE AREA D: INCREASED PRODUCTIVITY THROUGH IMPROVED PERSONNEL ADMINISTRATION

RECRUITMENT AND SELECTION

Recommendation 18: Establish a recruitment and selection training program and require attendance by state hiring officials at least every three years to improve the state's recruitment and selection practices and the quality of incoming employees.

*

Recommendation 19: Require all state agencies to recruit through Job Service for all job openings to provide citizens with a single source of information on all state openings, but permit agencies to also recruit elsewhere to meet special recruitment needs.

*

Recommendation 20: Require Job Service to post notices of all state job openings and designate them as state openings.

*

Recommendation 21: Establish a comprehensive agreement between Job Service and the state providing that Job Service will screen applicants down to the number specified by the agency for positions which readily permit such screenings. This would include clerical positions for which screening can be based on typing tests, and positions without skill requirements for which referral can be random. In these cases, a list of the top qualified applicants or a specified number of applicants can be referred to the agency. For positions requiring less easily assessed qualifications, Job Service would screen applicants for possession of minimum qualifications only, and refer all applicants who meet the minimum.

*

Recommendation 22: Establish a joint Job Service Division/Personnel Division training team to develop and provide a selection training program for Job Service interviewers involved in referrals for state positions.

*

Recommendation 23: Provide sufficient resources to update and validate merit examinations being administered by the Job Service. Estimated to be 2 FTEs with test development expertise.

*

* Vote: passed unanimously

HIRING PREFERENCES

Recommendation 24: Amend the Veteran's and Handicapped Civilian Preference Act (10-2-201 through 10-2-206, MCA) to clarify the preference requirement to mean a preference granted over other candidates who are substantially equally qualified as opposed to an absolute employment preference.

**

Recommendation 25: Amend the Veteran's and Handicapped Civilian Preference Act to clearly indicate the relationship between competing preferences and how those preferences should be administered.

**

Recommendation 26: Amend the Veteran's and Handicapped Civilian Preference Act to clarify that the employment preference does not extend over existing employees or those employees who have been laid off and retain reinstatement rights to their jobs.

**

Recommendation 27: Amend the Veteran's and Handicapped Civilian Preference Act to limit preference to initial appointment.

** Vote: passed unanimously. Implementing legislation being proposed by the Governor's Committee on Employment of the Handicapped.

EMPLOYEE/MANAGEMENT TRAINING

Recommendation 28: Expand the capacity of individual agencies to provide job or program specific training by providing training funds in every agency's budget based on a well-developed needs assessment and training plan.

Recommendation 29: Establish a central training section responsible for general skills training, *particularly management training* with the following specific functions:

1. Develop and provide a managerial and supervisory curriculum specific to Montana state managers and supervisors making use of internal resources, University personnel, and private consultants.
2. Coordinate training resources including internal resources, the University System, and private vendors to avoid redundant purchases and make full use of available programs.
3. Provide technical assistance to agencies in conducting needs assessments, developing training plans, and developing and assessing in-house training activities and budgets.
4. Continue to select workshop programs using private vendors more carefully selected to meet identified training needs.
5. Directly provide general skills training not available at reasonable cost elsewhere.

Recommendation 30: Require all newly hired managers to take core management courses.

*** Vote: passed unanimously

NON-MONETARY INCENTIVES

Recommendation 31: Establish a non-monetary award program that recognizes the accomplishments of individuals and groups of employees. (Vote: passed unanimously)

EMPLOYEE ASSISTANCE

Recommendation 32: Study the need for a state employee assistance program to provide aid to employees and the supervisors of employees whose personal crises affect job performance. The program would address personal crises such as alcohol abuse, emotional stress created by divorce, family deaths, etc. The Personnel Division is to prepare a detailed proposal with justification for consideration by the 1985 Legislature. In the interim, the Division is to provide what information and training it can within its existing resources to assist supervisors in dealing with employee assistance problems. (Vote: passed unanimously)

GRIEVANCE RESOLUTION

Recommendation 33: Establish a uniform procedure for resolution of significant employee grievances (defined as termination, demotion, suspension or layoff of more than 40 working hours, involuntary transfer to another geographical location and retaliation for filing a grievance or participating in the grievance process) and discontinue specialized procedures as follows:

1. Statutorily require every agency including legislative and judicial agencies to establish a grievance procedure which may be used by all agency employees except probationary, contractual and specified policy-making employees, provided that employees with an applicable negotiated grievance procedure may not pursue a grievance under both procedures.

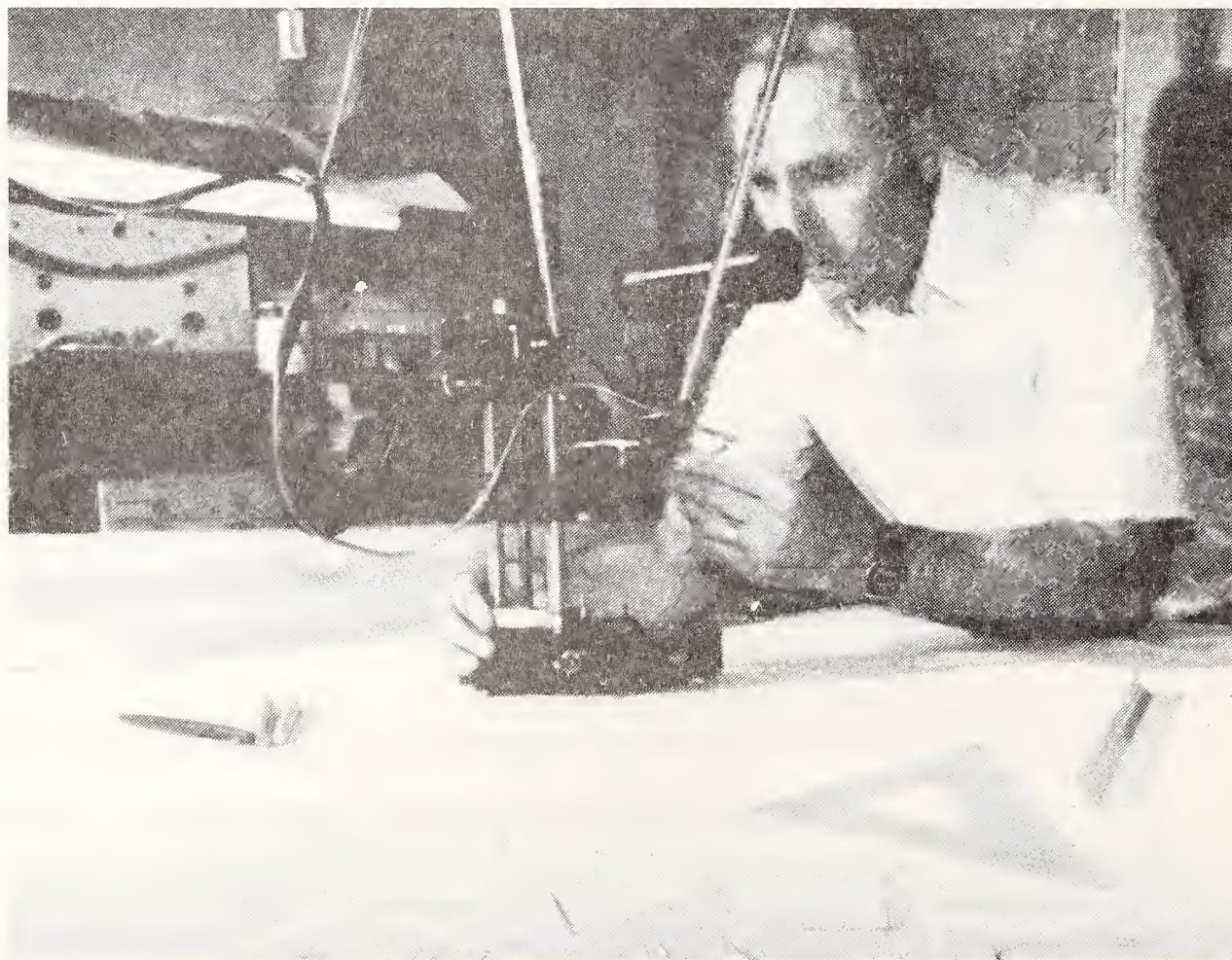
Agency grievance procedures are to include, at a minimum:

- a. a requirement that the agency provide at least five days prior notice of a grievable agency action, whenever practical;
- b. a requirement that agency action on grievable subjects be consistent with contemporaneous written agency policy;
- c. a ten, working day period after a grievable act in which employees may file a grievance;
- d. an opportunity for a grieving employee on his own time to examine relevant documents subject to limits of Article II, section 10 of the State Constitution and to question witnesses and present his views;

- e. the right of a grieving employee to a hearing consistent with the Montana Administrative Procedures Act conducted by an independent hearings officer who shall issue an advisory decision;
 - f. the right to a written final decision by the chief administrative officer of the employing state agency which is responsive to the issues raised in the grievance and which is provided within 90 days following the filing of the grievance unless the time period is extended by mutual agreement of the agency and grievant;
 - g. authority for the chief administrative officer to remedy a valid grievance (In the case of alleged procedural errors, the chief administrative officer may require the act to be redone following proper procedures if the errors were prejudicial to the grievant. If the errors were not prejudicial, no remedy need be given.)
- 2. Statutorily provide employees with the right to enforce statutory grievance rights through a district court of appropriate venue and to be awarded costs and attorney's fees if they prevail.
 - 3. Abolish the Merit System Council.
 - 4. Repeal statutory provisions establishing grievance appeal procedures through the Board of Personnel Appeals for employees of the Departments of Highways and Fish, Wildlife and Parks. (Vote: 7-yes, 5-no)

See proposed implementing legislation, LC0124/01, in Appendix B.

Minority views are presented in Chapter VII.



Photogrammetry (mapping from aerial photographs), Highway Department.

CHAPTER III

ISSUE AREA A: LEGISLATIVE INVOLVEMENT IN COLLECTIVE BARGAINING

ISSUE

The Collective Bargaining for Public Employees Act provides that the exclusive representative of state employees and the public employer shall have the authority and the duty to bargain collectively with respect to wages, hours, fringe benefits, and other conditions of employment. It further states that for state government only, the requirement of negotiating in good faith may be met by the submission of a negotiated settlement to the legislature in the executive budget or by bill or joint resolution.

The Governor (or his authorized representative) is designated as the representative of the state, excluding the University System, for purposes of collective bargaining. However, 39-31-102, MCA, states that "This chapter does not limit the authority of the legislature, any political subdivision, or the governing body relative to appropriation of salary and wages, hours, fringe benefits, and other conditions of employment."

This assignment of bargaining responsibility to the executive branch and appropriations authority to the legislative branch tends to confuse the negotiating process. The executive branch faces the possibility of negotiating a settlement that the legislature either refuses to fund or underfunds resulting in renegotiations, strikes, or the necessity of lay-offs to meet contract obligations.

The union bargaining agents are in the position of first having to negotiate a settlement and then having to lobby the legislature to appropriate funds for the settlement.

Many members of the legislature feel that once tentative agreements are reached, they face considerable pressure to rubber stamp the settlements and that they have little, if any, involvement in the process.

There are four basic models for legislative involvement in collective bargaining found in other states many of which increase the likelihood that negotiated agreements will be acceptable to both the executive and legislative branch. All four models are viewed favorably by at least some of the parties involved:

1. Complete legislative control of economic items (legislation of the pay plan.)

This model is incompatible with the collective bargaining laws which make employee compensation a negotiable item.

2. A legislative role in bargaining strategy and ratification through a legislative standing committee.

This model reportedly works well in the state of Wisconsin. Due to time pressures on legislative leaders on the committee who are heavily involved in session activities, the committee has reduced the scope of its involvement over the course of its existence but still provides parameters and ratifies agreements. Direct lobbying of committee members is a danger of this approach.

3. Legislative committee review and ratification occasionally affecting bargaining.

This model reportedly works well in Minnesota. It does not involve as much legislative direction as Model 2, but does insure communication.

4. Legislative final approval of contracts preceded by extensive informal contact between executive branch negotiators and the legislative leadership.

This model reportedly works well in a number of states depending on the quality of communication.

See the Bibliography "Issue Area A" in Appendix E for a list of the staff reports and resource materials considered.

FINDING

F-1.

There is no clearly preferred model for assuring both executive and legislative branch acceptance of collective bargaining agreements. Any approach which is agreed to by both parties and involves adequate, clear communication has a

good chance of producing mutually acceptable agreements. If the need for more communication and input into the process expressed by some legislators is a common legislative view, the process should be changed so that it is more agreeable to the legislative branch.

RECOMMENDATIONS

Recommendation 1: Administratively implement the following measures:

1. The Department of Administration is to provide early and periodic briefings on the conduct and progress of collective bargaining to the legislative leadership and/or any committees established for that purpose.

Briefings are to consist of: (a) *Prenegotiation*: The broad parameters set for negotiations, anticipated collective bargaining issues, (b) *During negotiations*: Brief summaries of the status of offers and counteroffers; "substantial changes" under discussion regarding wages, employee benefits, personnel management, and contract provisions with program policy implications, (c) *Presession*: Negotiated settlements; unresolved issues; progress to date; the fiscal ramifications of proposed settlements and the draft pay plan bill.

2. The State employee pay bill is to be introduced earlier than in previous sessions.

3. The Office of the Legislative Fiscal Analyst/Office of Budget and Program Planning/Department of Administration are to establish a reliable system to calculate the cost of the negotiated settlements and the State employee pay plan in a manner that can be independently verified by all parties. (Vote: passed unanimously)

See Appendix D for the Department of Administration proposal which formed the basis for this recommendation.

Recommendation 2: The mechanism described below for ongoing legislative input into the collective bargaining process is presented, without recommendation, for the legislature's consideration.

Establish a Joint Legislative Committee on Employee Compensation with the following features:

1. Composition:
 - a. one member appointed by the majority leader of the House;
 - b. one member appointed by the majority leader of the Senate;
 - c. one member appointed by the minority leader of the House;
 - d. one member appointed by the minority leader of the Senate;
 - e. the chairman of the Senate Finance and Claims Committee;
 - f. the chairman of the House Appropriations Committee;
 - g. the Speaker of the House;
 - h. the President of the Senate;
 - i. two additional members, one appointed by the Senate Committee on Committees and one appointed by the House Appropriations Committee, unless five or more of the first eight members are of the same political party, in which case one of the two additional members shall be appointed by the minority leader of the House and one by the minority leader of the Senate. (This provision provides some balance in political party representation. When both houses of the legislature are controlled by one party, it guarantees that at least four of the ten members will be of the minority party.)
2. Duties:
 - a. Consult with executive branch negotiators in the form and detail determined by the Committee regarding substantial changes in any existing or new contract provision with an economic impact.
 - b. Approve or disapprove economic settlements subject to final approval by the full legislature.

- c. Approve or disapprove the compensation and benefit plans for unorganized employees proposed by the Department of Administration and subject to final approval by

the full legislature. (Vote: 9-yes, 3-no)

See proposed implementing legislation, LC0078/01, in Appendix B.



Operating an area office computer, Highway Department.

CHAPTER IV

ISSUE AREA B: OPERATIONS OF MONTANA'S COLLECTIVE BARGAINING LAWS

The Commission addressed the overall question of whether the actual operation of Montana's collective bargaining laws are workable and accomplishing their purpose by examining several aspects of public sector collective bargaining. These included: (1) operations of Montana's labor board or labor relations agency—the Board of Personnel Appeals, (2) impasse resolution procedures, (3) the collective bargaining process, and (4) incidences of confusion or duplication created by existing statutory language.

OPERATIONS OF THE BOARD OF PERSONNEL APPEALS

ISSUE

In its examination of Board of Personnel Appeals operations, the Study Commission addressed three major issues which are typical concerns of users of any labor board or labor relations agency. These are:

1. timeliness of dispute resolution, particularly timeliness of unfair labor practice proceedings;
2. user confidence in the professionalism and neutrality of the Board and its staff; and
3. the level of discretion exercised by the Board of Personnel Appeals in decision making.

These three issues are summarized below:

1. **THE ISSUE OF TIMELINESS:** Available figures (for unfair labor practice charges filed between 10-78 and 5-81) indicated that the Board of Personnel Appeals exceeds its statutory five-month time limit for issuing a final decision after "submission of a complaint" (interpreted by the Board of Personnel Appeals to mean five months after submission of final briefs by both parties) in 55% of the cases. Proceedings average nearly eleven months from filing to issuance of a final Board of Personnel Appeals decision and some exceed a year and a half.

Some parties to unfair labor practice proceedings complain that the time required to obtain resolution is too great and frustrates justice. Agreeing that timeliness is critical, the Board of Personnel Appeals noted recently instituted changes in staff procedures which are expected to expedite proceedings. Many of the changes were recommended by an independent Public Employment Relations Service Review and Evaluation Team. The Board of Personnel Appeals also observed that unavoidable delays are caused by the precedence given mediation requests and that one possible approach to streamlining the process (staff investigation and dismissal of unmeritorious cases) is frustrated by the statutory requirement that all cases be automatically scheduled for hearing before the Board of Personnel Appeals.

2. **THE ISSUE OF CONFIDENCE IN PROFESSIONALISM AND NEUTRALITY:** While many Board of Personnel Appeals users reportedly respect the Board of Personnel Appeals and staff for its professionalism and neutrality, others report doubts about these characteristics.

3. **THE ISSUE OF LEVEL OF DISCRETION:** The Board of Personnel Appeals, like most administrative agencies, administers laws which contain ambiguities necessitating use of discretion in interpretation. This sometimes involves the use of discretion or assumption of authority that user groups feel is excessive.

The two major instances of alleged excesses examined by the Study Commission were:

- a. The Board's practice of assuming jurisdiction over contract disputes as opposed to deferring them to arbitration where the contract provides a grievance procedure ending in binding arbitration.

Opponents of this practice argue that it makes the Board a "free" grievance panel which was never intended, that it is contrary to the precedent set by national case law, and that arbitration is faster, more conclusive and places the dispute where it belongs—with the parties.

Supporters argue that national precedent is not so clear, and that the goal of balancing the rights of employees and employers is better served by Board assumption of jurisdiction since arbitration is too expensive for small unions and small employers.

- b. The Board's interpretation of the grandfather clause of the Collective Bargaining for Public Employees Act as protecting not only contracts in existence before passage of the act but also units in existence before passage of the act. This interpretation permits occupants of supervisory positions who were part of a pre-existing unit to remain in the unit even though they are ineligible under the act unless the employer can demonstrate that inclusion creates substantial conflict.

Opponents argue that units were never intended to be protected, that the Board's interpretation frustrates legislative intent that only non-supervisory employees be eligible and that, regardless of intent, after eight years of operation, it is no longer needed and serves only to create problems and litigation.

Supporters argue that the grandfather clause was part of the original compromises struck during passage of the act, was necessary to protect existing relationships, that the Board of Personnel Appeals correctly interprets it to cover units and that it creates no significant problems.

See the Bibliography "Issue Area B" in Appendix E for a list of the staff reports and resource materials considered.

FINDINGS

F-2. REGARDING THE ISSUE OF TIMELINESS

Although due process requirements and the precedence given mediation precludes overnight resolution of unfair labor practice charges, justice demands the speediest possible resolution consistent with these requirements and conflicting demands. In light of recent improvements in Board of Personnel Appeals staff procedures, no specific recommendations for expediting unfair labor practice proceedings and abiding by statutory time limits are needed at this time. The time limit should be clarified and the statutory impediment to speedier resolution removed.

F-3. REGARDING THE ISSUE OF CONFIDENCE IN PROFESSIONALISM AND NEUTRALITY

Specialists in the field of labor relations generally agree that, since public sector labor relations by its nature exists in the political world, establishing and maintaining a labor board or labor relations agency whose integrity and impartiality the parties respect is not an easy achievement but one that is central to its overall effectiveness. While the Board of Personnel Appeals and staff are generally respected for their professionalism and impartiality, a number of factors contribute to lack of confidence by some users.

These are:

- a. Assignment of the same staff person to conduct both adversarial proceedings and mediation for the same employee or employer. (The Board of Personnel Appeals has indicated that these practices are avoided whenever possible within the constraints of a small staff.)
- b. No opportunity for parties to a dispute to reject an assigned hearings officer in whom they lack confidence for whatever reason.
- c. Lack of staff training in mediation due to insufficient funds.
- d. Inaccessibility of precedent setting Board decisions resulting from insufficient funds to complete a case index.
- e. Selection and supervision of Board of Personnel Appeals staff by the Commissioner of Labor and Industry rather than by the Board, creating the potential for outside influence over staff proceedings and potential lack of confidence in the neutrality of the Board staff in cases involving the Department of Labor and Industry.

F-4. REGARDING THE ISSUE OF LEVEL OF DISCRETION

The Board of Personnel Appeals has not clearly exceeded an appropriate level of discretion in

either of the incidents examined. With respect to deferral of contract disputes to an existing contractual arbitration process, the Board recently made two such deferrals establishing a precedent for future referrals.

With respect to its interpretation of the grandfather clause, the Montana Supreme Court in *City of Billings v. Billings Firefighters Local No. 521*, 39 St. Rep. 1844 (1982) recently upheld the Board's authority to interpret the grandfather clause to protect collective bargaining units.

However, given the uncertainty about legislative intent in enacting the grandfather clause, the general principle that management employees should be excluded from bargaining units and the practical problems created by their continued inclusion, recommendation 12 has been adopted to clarify the statutory language. The recommended language protects incumbents of grandfathered positions but not their replacements, thus permitting eventual exclusion of supervisory employees.

RECOMMENDATIONS

Recommendation 3: Amend the Collective Bargaining for Public Employees statute to clarify the starting date of the five-month time limit for a final Board of Personnel Appeals decision on an unfair labor practice case as: "five months after final briefs are submitted to the hearings officer or, if no briefs are submitted, then within five months after the hearing." (Vote: passed unanimously)

See proposed implementing legislation, LC0012/01, in Appendix B.

Recommendation 4: Amend the Collective Bargaining for Public Employees statute to permit the Board of Personnel Appeals staff to expedite unfair labor practice proceedings by investigating an unfair labor practice complaint and dismissing the charge if it is found unmeritorious subject to review by the Board if a request for a review is made by the charging party within ten days of the staff notice of intent to dismiss. (Vote: passed unanimously)

See proposed implementing legislation, LC0013/01, in Appendix B.

Recommendation 5: Provide both parties to an unfair labor practice charge with the right to disqualify the person designated by the Board of Personnel Appeals to hear the complaint. (Vote: 11-yes, 1-no)

See proposed implementing legislation, LC0117/01, in Appendix B.

Recommendation 6: Provide funds to the Board of Personnel Appeals to provide training in mediation to its staff -\$5,000 was the projected amount needed. (Vote: passed unanimously)

Recommendation 7: Provide funds to the Board of Personnel Appeals to complete an index of its decisions—\$5,000 was the projected amount needed. (Vote: passed unanimously)

Recommendation 8: Amend the statute establishing the Board of Personnel Appeals, 2-15-1705, M.C.A., to give the Board the authority to hire its own staff. (Vote: 10-yes, 2-no)

See proposed implementing legislation, LC0044/01, in Appendix B.

IMPASSE RESOLUTION ISSUE

The Collective Bargaining for Public Employees Act provides three methods for resolving an impasse in collective bargaining between an employer and labor organization: mediation—a relatively informal attempt by a neutral mediator to bring both parties to agreement; fact finding—a more formal process involving information gathering by a neutral fact finder and a written report with recommendations which must be made public if agreement is not reached; and voluntary binding arbitration—a formal process involving a hearing and a binding decision by a neutral arbitrator. Since only binding arbitration involves imposition of a solution on both parties, it is the only method which automatically ends an impasse.

Montana's three impasse resolution methods are used by most states. However, unlike other states, Montana public employees may, with few restrictions*, stop work or strike to end an impasse. All other states either prohibit all strikes or prohibit strikes which interrupt essential services. However, many states have found that strike prohibitions without an effective alternative—generally binding arbitration—do not eliminate strikes but rather produce illegal strikes which create greater animosity and disruption in public service than most legal strikes.

See the Bibliography "Issue Area B" in Appendix E for a list of the staff reports and other materials considered.

FINDINGS

F-5.

Mediation is responsible for resolving a large percentage of disputes and should be required before any concerted action -either a strike by employees or lockout by the employer. The most critical factors in the success of mediation aside from the extent of differences between the parties is trained mediators and the perceived neutrality of the mediators.

F-6.

Fact finding is successful in resolving some types of disputes and consequently should continue to be available for implementation by either party but should not be required.

F-7.

Binding arbitration is an effective alternative to disruptive strikes but has a major disadvantage. It transfers fiscal control from the public jurisdiction to an outside third party. Consequently, binding arbitration should *not* be *statutorily imposed* on a public sector employer unless in all cases the negative effect of a strike would outweigh the adverse fiscal impact. (Many jurisdictions who previously favored binding arbitration over the right to strike are finding that most strikes are more manageable than the fiscal impact of binding arbitration.)

F-8.

Binding arbitration should continue to be an *available option* for use when both the employer and labor organization agree to it because, in a particular case, they feel it would be preferable to the adverse consequences of a strike. It should also be available as an option to a harmful strike which can be imposed by a district court along with a strike injunction *provided* that district court, upon petition by the employer, deter-

mines that the strike poses an imminent danger to the health, safety *provided* that district court, upon petition by the employer, determines that the strike poses an imminent danger to the health, safety and welfare of the public. (See finding F-10.)

F-9.

Strikes should only be prohibited when binding arbitration is an acceptable alternative—i.e., when the public employer is willing to risk the fiscal impact of binding arbitration because a strike poses an imminent danger to the health, safety and welfare of the public. Prohibition without an effective alternative results in illegal strikes, which are more severe, create more adversarial proceedings such as contempt proceedings and jailings, produce more militancy; and generally make continuation of public service more difficult than a legal strike.

F-10.

The adverse effects of strikes by public employees on the public itself should be reduced. Adverse effects can be reduced in two ways. First, by requiring prior notice before any strike by public employees. This will permit contingency planning to minimize the adverse impact upon the public. Second, by providing a means to end strikes by public employees which are causing imminent danger to the public's health, safety and welfare.

The best means of ending strikes which are harmful to the public is to allow the employer to petition district court to enjoin the strike if the court determines it endangers the public with the condition that enjoining the strike will institute binding, package, final-offer arbitration to settle the dispute.

* There are certain restrictions on strikes by nurses and provisions for binding arbitration in lieu of a strike by firefighters when initiated by either the employer or labor organization.

Package, final-offer arbitration has been found to be a fair process because it involves a decision by an independent neutral party between the final package offered by each party involved in

negotiations. Since the arbitrator will select the most reasonable package, the parties generally offer packages that are similar and at least partially meet the demands of the other party.

RECOMMENDATIONS

Recommendation 9: Amend the Collective Bargaining for Public Employees Act to:

1. require use of mediation before concerted action by either party to a dispute;
2. require a 120-hour (5 day) notice of a concerted refusal to work at any public place or before engaging in any strike, lockout or picket which results in a concerted refusal to work at any public place of employment;
3. provide injunctive relief for a violation of either of these provisions. (Vote: 9-yes, 3-no)

See proposed implementing legislation, LC0074/01, in Appendix B.

Recommendation 10: Amend the Collective Bargaining for Public Employees Act to provide injunctive relief from a strike or work stoppage upon a petition to district court by a public employer where the court determines that continuation of a strike would pose an imminent danger to the health, safety or welfare of the public, as opposed to inconvenience or discomfort. Injunctive relief automatically triggers compulsory, final-offer arbitration which is binding on both parties including the governing body responsible for appropriating funds. (Vote: 7-yes, 5-no)

See proposed implementing legislation, LC0093/01, in Appendix B.

THE COLLECTIVE BARGAINING PROCESS ISSUE

Statutory language in the Collective Bargaining for Public Employees Act, 39-31-305 MCA, suggests that the legislature intended that economic items be negotiated in advance of the legislative session. In addition, gubernatorial executive orders 2-15, 9-11 and 12-81 call for pre-budget negotiations on economic items. Non-economic items are generally negotiated later as contracts expire.

This two-tiered collective bargaining process was developed to permit economic items to be included in the executive budget but has been criticized by both management and labor.

Both parties feel that it provides insufficient bargaining flexibility. Managers complain that once salaries and benefits are set, there are few bargaining "chips" for second-tier bargaining. They also complain that, although second-tier bargaining supposedly involves non-economic items (seniority clauses, grievance procedures, etc. as opposed to wages and benefits) many items with an economic impact such as uniform allowances are bargained second-tier and agreements may consequently involve unbudgeted expenses.

Labor leaders complain that it is usually impossible to obtain concessions on any items involving costs after the Legislature goes home. They also complain about being pressured to reach agreements on non-economic items under threat that previously negotiated economic benefits will be withheld until agreements are reached.

See the Bibliography "Issue Area B" in Appendix E for a list of the staff reports and other materials considered.

FINDING

F-11.

Although comprehensive pre-budget negotiations may be difficult to realize given the small size of the state's labor relations staff and the large number of bargaining units, the advan-

tages of increased flexibility and the ability to budget for all cost items make it a worthwhile goal, that should be pursued by all parties.

RECOMMENDATION

Recommendation 11: Administratively move items) to increase bargaining flexibility. (Vote: toward a single pre-budget negotiation session passed unanimously) for all items (both economic and non-economic

HOUSEKEEPING MEASURES TO ELIMINATE CONFUSION AND DUPLICATION IN THE COLLECTIVE BARGAINING PROCESS

ISSUE

The Commission identified three incidences of ambiguity or duplication in the collective bargaining process which it felt could be corrected through statutory changes. These were:

1. ambiguity in the grandfather clause of the Collective Bargaining for Public Employees Act, 39-31-109, M.C.A., and consequent disagreement over appropriate application;
2. duplication in statutory language and the collective bargaining process for public sector nurses and other public sector employees; and
3. duplication in authority to make unfair labor practice determinations between the Labor Appeals Board which makes such determinations for purposes of deciding eligibility for unemployment compensation and the State Board of Personnel Appeals and National Labor Relations Board, which make such determinations for all other purposes.

The three issues are summarized below:

1. **THE ISSUE OF THE GRANDFATHER CLAUSE:** The grandfather clause of the Collective Bargaining for Public Employees Act, 39-31-109, M.C.A., states: "Nothing in this chapter shall be construed to remove recognition of established collective bargaining agreements already recognized or in existence prior to the effective date of this Act." The Board of Personnel Appeals has interpreted this language to protect collective bargaining units which were in existence prior to the passage of the act as well as preexisting collective bargaining agreements. While the Supreme Court in *City of Billings v. Billings Firefighters Local No. 521*, 39 St. Rep. 1844 (1982), recently upheld the Board of Personnel Appeal's authority to interpret the clause in this way, the intent of the legislature, and the desirability of such an interpretation, remain at issue. See previous section on Operations of the Board of Personnel Appeals—Issue.

2. **THE ISSUE OF DUPLICATE STATUTES AND PROCESSES FOR NURSES:** The Collective Bargaining for Nurses Act (CBNA) serves the same purpose as the Collective Bargaining for Public Employees Act (CBPEA)—to establish statutory collective bargaining rights—but since it predated the CBPEA, it contains inconsistent provisions or lacks provisions of the more general CBPEA. While most of the gaps and inconsistencies in the Nurses' Act have been corrected through administrative rules adopted by the Board of Personnel Appeals, the need for a separate act remains at issue.

Opponents of a separate nurses' act argue that (a) the inconsistencies between the two acts create unnecessary confusion, especially with respect to LPNs who appear to be covered by both acts, and (b) that while consistency between the Nurses' Act and the CBPEA is desirable, use of administrative rules to create consistency is inappropriate use of administrative rules to make law.

Advocates of separate acts—The Montana Nurses' Association—argue (a) that no significant problems have been created by separate acts, (b) that coverage of public sector nurses by the CBPEA and repeal of the CBNA would result in the exclusion of supervisory nurses who might organize in the future (no supervisory nurses are currently organized under the Nurses' Act), and (c) that coverage of public sector nurses by the CBPEA and repeal of the CBNA would eliminate all statutory rights to bargain collectively for private sector nurses who are not covered by the National Labor Relations Act. This includes nurses who are employed by a health care facility with annual revenues of under \$250,000. (No private sector nurses are currently organized under the CBNA.)

3. **THE ISSUE OF DUAL AUTHORITY TO DETERMINE UNFAIR LABOR PRACTICES:** The statute administered by the Board of Labor Appeals contains a provision, 39-51-2305, M.C.A., that requires the Board to consider a violation of any statute by the employer (which could include an unfair labor practice) for purposes of determining whether the employer unlawfully caused the unemployment of a claimant for unemployment benefits thus entitling the claimant to benefits.

Consequently, the Labor Appeals Board claims authority to determine whether an employer has committed an unfair labor practice and this authority was recently upheld in a First Judicial District Court decision, *State of Montana v. AFSCME*, No. 47496 (March 9, 1982). Thus, the Labor Appeals Board determines whether an employer has committed an unfair labor practice for purposes of determining eligibility for unemployment compensation, and either the Board of Personnel Appeals or National Labor Relations Board makes this determination for all other purposes creating the possibility of conflicting determinations.

The Labor Appeals Board argues that it needs authority to make this determination because determinations by the Board of Personnel Appeals and National Labor Relations Board are made too late to provide meaningful unemployment benefits.

Opponents of this authority for the Board of Labor Appeals argue that, while the Board of Personnel Appeals is generally respected for its neutrality, the Labor Appeals Board is not a neutral Board (it has a disproportionate number of labor representatives) and has never ruled against a claimant.

See the Bibliography "Issue Area B" in Appendix E for a list of the staff reports and other materials considered.

FINDINGS

F-12. REGARDING THE ISSUE OF THE GRANDFATHER CLAUSE

The existing interpretation of the grandfather clause violates the principle and apparent legislative intent that only non-supervisory employees be eligible to belong to bargaining units. The language should consequently be clarified to permit eventual exclusion of supervisory employees from bargaining units without eliminating protection for current employees in grandfathered positions.

F-13. REGARDING THE ISSUE OF DUPLICATE STATUTES AND PROCESSES FOR NURSES

Recognizing the commitment of professional nurses to their pioneer Collective Bargaining for

Nurses Act, the act should be retained, but in the interest of fairness and consistency, it should be amended to define unfair labor practices by labor organizations and make procedures for nurses more consistent with those established for public employees by the Collective Bargaining for Public Employees Act.

F-14. REGARDING THE ISSUE OF DUAL AUTHORITY TO DETERMINE U.L.P.S.

Determination of whether an unfair labor practice has been committed should be left to the state and national labor boards constructed and trained to make such determinations, and both boards should streamline their procedures to permit such determinations as early as possible.

RECOMMENDATIONS

Recommendation 12: Amend the Collective Bargaining for Public Employees Act (CBPEA) to clarify the nature of the grandfather protection provided to employees in positions which were contained in bargaining units prior to the effective date of the CBPEA—July 1, 1973 as follows: If on July 1, 1973 (the effective date of the CBPEA) a collective bargaining unit contained a position occupied by an employee who would not be eligible to belong to the unit under the

CBPEA (a supervisor) then the employee who occupies that position on the effective date of this amendment (October 1, 1983) may, if he desires remain in the bargaining unit for as long as he continues to occupy the same position or another position which was contained in the unit on July 1, 1973, unless the Board of Personnel Appeals determines that he should be excluded. If the employee leaves a position which on July 1, 1973 was contained in the unit and occupied by an

employee who would not be eligible to belong to the unit under the CBPEA (a supervisor), his replacement is excluded from the bargaining unit unless the replacement has, since the effective date of this act (October 1, 1983), continuously occupied a position or positions which were contained in the unit on July 1, 1973. (Vote: 9-yes, 3-no)

See proposed implementing legislation, LC0027/01, in Appendix B.

Recommendation 13: Amend the Collective Bargaining for Nurses Act to: (1) establish unfair labor practices for labor organizations representing nurses as well as for health care facilities (employers), (2) establish procedures for adjudicating unfair labor practice charges consistent with procedures under the CBPEA and, (3) make procedures for determining appropriate units and resolving representation questions for nurses more consistent with procedures es-

tablished by the CBPEA for public employees. (Vote: 7-yes, 4-no)

See proposed implementing legislation, LC0046/01, in Appendix B.

Minority views are presented in Chapter VII.

Recommendation 14: Amend 39-51-2305, M.C.A., to require the Labor Appeals Board (referred to in statute as the Department of Labor and Industry) to defer to the Board of Personnel Appeals or the National Labor Relations Board for a determination of whether the employer of an applicant for unemployment benefits committed an unfair labor practice that resulted in a labor dispute, work stoppage and the applicant's unemployment for purposes of deciding whether the applicant is entitled to benefits. (Vote: 10-yes, 2-no)

See proposed implementing legislation, LC0076/01, in Appendix B.



Check station, Department of Fish, Wildlife and Parks.

CHAPTER V

POSITION CLASSIFICATION AND EMPLOYEE PAY

The Personnel and Labor Relations Study Commission examined the related but distinct operations of classifying positions and compensating employees. The classification methodology and application were examined to determine if they adequately meet the two main objectives of: (a) grouping like positions into classes, and (b) fairly ranking classes into a hierarchy of skill levels or grades. Compensation policies and practices were examined to determine if employees are appropriately compensated once their positions are classified.

POSITION CLASSIFICATION ISSUE

From its inception in 1975, the state's classification system has run into criticism—originally in the form of a large number of appeals. These backlogged and diverted resources that could have otherwise been used to make system improvements.

The backlog and the number of new complaints have since dwindled and many improvements have been made, but a survey of managers and testimony by employees revealed continued dissatisfaction with features of the current system. Although many of these complaints involve compensation as opposed to job classification (uncompetitive salaries and inability to reward performance), classification methodology is commonly faulted for its perceived subjectivity.

Montana's classification methodology is a "qualitative" methodology which is used in some form by many states. However, some states and many private sector employers have switched to a "quantitative" methodology because of its greater perceived objectivity.

All classification methodologies involve judgment in applying established criteria called "factors" to jobs to determine their relative job worth. Common factors are: complexity of work, supervision exercised, freedom to act, etc.

Quantitative job evaluation methods involve assigning points which reflect the classifier's judgment of the degree of each factor in a job—the degree of complexity of the work, the degree of supervision exercised. These points are then totaled to yield the job worth score or grade of the job.

In "qualitative" job evaluation methods like Montana's, jobs are compared to each other and a series of judgments are made as to the relative strengths and weaknesses of the jobs on each factor—the relative degrees of complexity of work, the relative degrees of supervision exercised. The end result is a single judgment concerning the appropriate skill level or grade. There is no record of the series of judgments which establish the final grade as in "quantitative" systems. Consequently, the process appears subjective, lacks confidence and is more difficult to review than quantitative methodologies.

Although some experts argue that "quantitative methodologies" require just as much judgment and simply appear to be more objective and scientific because of the numbers attached, most find that the additional rigor involved in quantifying these judgments minimizes error and classifier bias.

Other common complaints of the state's classification system voiced by users are:

1. Many class specifications (the primary document used in classifying positions) are imprecise and unclear, making both review on appeal and the proposed delegation of position classification to state agencies difficult. (A class specification rewrite project should bring all class specifications up-to-date by December of 1982.)
2. The classification methodology is not fully documented, also making review on appeal and delegation difficult. (This problem has recently been corrected by issuance of a Classification Procedures Manual.)

3. There are too many classes, too many levels. (These are currently being reduced.)
4. Managers are not familiar with the system.
5. Many employees, particularly female employees, question whether the system provides internal equity—i.e., accurately ranks or grades classes according to their relative worth.
6. There is insufficient use of the job knowledge of incumbents and supervisors when classifying jobs.

See the Bibliography "Issue Area C" in Appendix E for a list of the staff reports and other materials considered.

FINDINGS

F-15.

In the face of a pay plan that provides little flexibility in wages for a job in a given classification, managers attempt to solve pay problems (such as inadequate pay to attract well qualified applicants or inability to reward and retain superior employees) through classification adjustments. They are naturally frustrated when constrained by a classification methodology which considers job duties only, not compensation needs. This frustration surfaces in the form of complaints which can be expected to continue regardless of the sophistication of the classification system as long as pay plan rules remain inflexible.

F-16.

Although Montana's classification system does not differ significantly from systems of other states, and has reached a reasonable level of sophistication given its short life span, improvements need to be made. Several significant improvements have been initiated or completed since the inception of the Personnel and Labor Relations Study Commission eliminating the need for recommendations in those areas. Planned improvements, particularly the phased introduction of quantitative methods are needed to make the system more understandable and reviewable. Incremental improvements are preferable to adopting a new system given the expense and disruption a new system would entail and the limited anticipated benefits of any known systems.

RECOMMENDATION

Recommendation 15: Maintain the current classification system and proceed with planned and existing efforts to enhance it by introducing quantitative methods where practical as quickly as time and resources allow. (Vote: passed unanimously)

Enhancement measures planned by the Personnel Division:

1. Phased introduction over a two and one-half year period of quantitative methods which will build on strengths of the current system (maintaining the five primary factors of the current factor comparison method) but use the best features of the quantitative Factor Ranking and Hay Guidechart methods. These include:

- a. Separate but coordinated and consistent point factoring systems for major occupational groups to better meet the needs of each group as found in the Factor Ranking System. Example: Group 1—executive managers, Group 2—professional, administrative and technical employees, Group 3—labor, trades and crafts, Group 4—clerical, office machine operators and technical em-

ployees, Group 5—special occupations: physicians, attorneys, teachers, law enforcement.

- b. Use of classification advisory committees for each occupational group comprised of agency representatives who are employed in, supervise, or are familiar with occupations in the group as found in the Hay Guidechart Method. These advisory committees are to monitor the development of the factor ranking system prior to its implementation, assist the Personnel Division in evaluating classes, recommend grade levels for classes, and assist in allocating positions to classes.
2. Delegation of position classification authority to agencies which demonstrate the capacity to exercise the authority coupled with post-classification audits by the Personnel Division to maintain consistency across agencies.
3. Implementation of these measures with existing staff utilizing staff time saved by the delegation measure.

EMPLOYEE PAY ISSUE

Because of time constraints, the Commission limited its examination of compensation policies and practices to the most pressing problem—insufficient pay plan flexibility to reward and encourage high levels of performance and productivity.

Under increasing pressure to increase productivity, managers commonly complain that they lack the tools to do so—that they lack tangible, monetary incentives with which to motivate employees to increase their proficiency and remain in state service. Employees correspondingly complain of insufficient recognition of a job well done.

Organized labor, on the other hand, opposes monetary performance incentives because of anticipated inequities in distribution and a preference that the funds involved be used to increase base pay or provide other benefits such as shift differentials.

Although public sector "merit pay" programs have been largely unsuccessful in increasing productivity because they have evolved into automatic annual increases unrelated to performance, private sector and well designed public sector pay-for-performance programs are reportedly successful in increasing production by 10% or more.

See the Bibliography "Issue Area C" in Appendix E for a list of the staff reports and other materials considered.

FINDINGS

F-17.

Since increased productivity is an important public policy goal and monetary incentives have proven useful in achieving that goal for a number of employers, they should be instituted for the state of Montana for unorganized employees with adequate controls on cost and with safeguards to insure proper administration.

F-18.

Monetary incentives should be in the form of periodic non-base-building bonuses as opposed to an increase to base pay which would perpetuate itself and increase costs.

F-19.

Greater pay plan flexibility is needed to more adequately meet diverse compensation needs.

RECOMMENDATIONS

Recommendation 16: Establish a non-base-building, pay-for-performance, bonus system for all unorganized employees. For employees within a bargaining unit, the subject of bonus pay shall remain a subject of collective bargaining.

Pay-for-performance funds appropriated by the legislature are to be distributed according to rules adopted by the Department of Administration.

These rules are to include:

1. a specification of the size of bonuses to be distributed (as opposed to a less structured system);

2. a requirement that the bonuses be limited to 20% of the eligible employees to insure that it does not become a blanket pay increase and;

3. a requirement that bonuses be limited to those agencies which have a fully implemented performance appraisal system which meets professional standards established by the Personnel Division. (Vote: 8-yes, 4-no)

Minority views are presented in Chapter VII.

Recommendation 17: Allow different pay plans and matrices for broad occupational groups of employees to better meet the compensation needs of each group but use the same underlying treatment to ensure internal equity. (Vote: passed unanimously)

CHAPTER VI

INCREASED PRODUCTIVITY THROUGH IMPROVED PERSONNEL ADMINISTRATION

The Personnel and Labor Relations Study Commission examined several areas of personnel administration which affect public sector productivity: (1) recruitment and selection, (2) hiring preferences, (3) employee/management training, (4) non-monetary incentives, (5) employee assistance, and (6) grievance resolution. The issues involved in each area are as follows:

RECRUITMENT AND SELECTION ISSUE

Currently, both recruitment and selection functions are decentralized and are structured at the discretion of individual agencies. Generally, agencies use one or a combination of three recruitment systems:

1. Exclusive recruitment through Job Service.
2. General recruitment usually involving recruitment through Job Service plus specialized recruitment for affirmative action and to fill technical and specialized positions.
3. Ad hoc recruitment involving procedures developed by the hiring official. These can include word of mouth recruitment.

Similarly, agencies utilize a variety of selection procedures but most include a screen of applications, an interview, and a reference check. Some include a written exercise. In some agencies, all of these selection procedures are designed and conducted by the hiring official. In others, the agency personnel officer or an external agency (usually Job Service) conducts the initial screen.

While some of these procedures were once conducted centrally for some or all agencies, most agencies prefer to handle them within the agency. However, a substantial majority of managers feel a need for assistance—particularly in the selection area.

Potential applicants complain about insufficient notice of state openings and some complain of Job Service procedures -particularly failure to post all state openings, failure to make referrals for all appropriate openings, and over-reliance on educational requirements to screen applicants at the expense of employees with equivalent experience.

See the Bibliography "Issue Area D" in Appendix E for a list of the staff reports and other materials considered.

FINDINGS

F-20.

As a public employer, the state should make information on all state openings accessible to the public.

F-21.

State agencies should increase the sophistication of their methods for selecting employees from among applicant groups to: (a) increase the quality of incoming employees, (b) assure fairness, and (c) decrease liability associated with charges of unlawful hiring practices.

F-22.

The process of selecting new employees is inherently a process of predicting a person's ability to perform job duties and reasonable prediction requires: (a) job analysis to identify the knowledges, skills and abilities required and (b) the assignment of selection responsibility to individuals with a thorough, not casual or peripheral, knowledge of the results of this analysis.

RECOMMENDATIONS

Recommendation 18: Establish a recruitment and selection training program and require attendance by state hiring officials at least every three years to improve the state's recruitment and selection practices and the quality of incoming employees.

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Recommendation 19: Require all state agencies to recruit through Job Service for all job openings to provide citizens with a single source of information on all state openings, but permit agencies to also recruit elsewhere to meet special recruitment needs.

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Recommendation 20: Require Job Service to post notices of all state job openings and designate them as state openings.

*

Recommendation 21: Establish a comprehensive agreement between Job Service and the state providing that Job Service will screen ap-

plicants down to the number specified by the agency for positions which readily permit such screenings. This would include clerical positions for which screening can be based on typing tests, and positions without skill requirements for which referral can be random. In these cases, a list of the top qualified applicants or a specified number of applicants can be referred to the agency. For positions requiring less easily assessed qualifications, Job Service would screen applicants for possession of minimum qualifications only, and refer all applicants who meet the minimum.

*

Recommendation 22: Establish a joint Job Service Division/Personnel Division training team to develop and provide a selection training program for Job Service interviewers involved in referrals for state positions.

*

* Vote: passed unanimously.

HIRING PREFERENCES ISSUE

Several groups of people with employment disadvantages have been given employment preference through statutory or administrative action:

1. disabled veterans, veterans, spouses of veterans, and handicapped civilians—Veterans Preference Law;
2. laid off employees—State policy;
3. members of groups which have historically been victims of discrimination (minorities, women, the handicapped)—provided for by federal law, state law, executive order, and the Montana EEO Guidelines.

Preference for the first group was recently determined in a state district court decision, *Crabtree v. Montana State Library*, No. 47198, First Judicial District (February 14, 1982), to be an absolute preference—i.e., individuals in the preferred categories who meet minimum qualifications must be hired regardless of their relative qualifications. The district court ruling is currently under a stay pending an appeal to the Montana Supreme Court.

See the Bibliography "Issue Area D" in Appendix E for a list of the staff reports and other materials considered.

FINDING

F-23.

Hiring preferences should be clarified so that: (a) they can be easily and adequately administered, (b) they do not involve an absolute prefer-

ence which ignores qualifications, and (c) they do not exclude other disadvantaged groups which need employment assistance.

RECOMMENDATIONS

Recommendation 24: Amend the Veteran's and Handicapped Civilian Preference Act (10-2-201 through 10-2-206, MCA) to clarify the preference requirement to mean a preference granted over other candidates who are substantially equally qualified as opposed to an absolute employment preference.

**

Recommendation 25: Amend the Veteran's and Handicapped Civilian Preference Act to clearly indicate the relationship between competing preferences and how those preferences should be administered.

**

Recommendation 26: Amend the Veteran's and Handicapped Civilian Preference Act to clarify that the employment preference does not extend over existing employees or those employees who have been laid off and retain reinstatement rights to their jobs.

**

Recommendation 27: Amend the Veteran's and Handicapped Civilian Preference Act to limit preference to initial employment.

**

** Vote: passed unanimously

EMPLOYEE/MANAGEMENT TRAINING

ISSUE

Unlike most comparably sized private sector businesses and a number of other states, the state of Montana has no management training program to train newly appointed mid-level managers who are generally promoted from professional and technical positions. The state also lacks the ongoing assessment of employee training needs and development of training to meet those needs found elsewhere.

While most departments in state government offer training (the total reported training expenditure last year was \$1.4 million which appears to be only part of the total expenditure), all but a few large agencies with their own training staffs depend on outside vendors, conferences, or the central training section.

Until recently, the one-person central training section attempted to operate on fees generated by offering cafeteria style training by outside vendors. This approach proved unworkable because the vendor training did not meet state training needs. It consequently was recently discontinued in favor of providing only in-house training which is part of the Personnel Division mission—training in selection methods, contract administration, etc.

In a recent survey, state managers expressed a strong need for training resources to increase employee job skills, management skills and productivity. Many expressed the belief that training should be part of every agency's budget.

See the Bibliography "Issue Area D" in Appendix E for a list of the staff reports and other materials considered.

FINDINGS

F-24.

Productivity specialists agree that there are no magic solutions or short cuts to increased productivity—only better application of established principles of supervision and management—better planning, better organization, and particularly better employee supervision. The quality of supervision appears to be at least as important as monetary incentives in motivating employees. An effective management training program is consequently a key element of any effort to increase productivity.

F-25.

Like management training, job related employee training is an essential element of efforts to increase productivity provided that it is based on a careful needs assessment and training plan. It not only teaches employees to perform current jobs better, master new technology and prepare for higher level jobs, but increases job satisfaction and employee motivation.

RECOMMENDATIONS

Recommendation 28: Expand the capacity of individual agencies to provide job or program specific training by providing training funds in every agency's budget based on a well-developed needs assessment and training plan.

Recommendation 29: Establish a central training section responsible for general skills training, *particularly management training* with the following specific functions:

1. Develop and provide a managerial and supervisory curriculum specific to Montana state managers and supervisors making use of internal resources, University personnel, and private consultants.
2. Coordinate training resources including internal resources, the University System, and

private vendors to avoid redundant purchases and make full use of available programs.

3. Provide technical assistance to agencies in conducting needs assessments, developing training plans, and developing and assessing in-house training activities and budgets.

4. Continue to select workshop programs using private vendors more carefully selected to meet identified training needs.

5. Directly provide general skills training not available at reasonable cost elsewhere.

Recommendation 30: Require all newly hired managers to take core management courses.

*** Vote: passed unanimously

NON-MONETARY INCENTIVES ISSUE

Literature on employee motivation indicates that a good motivation plan utilizes several approaches including non-monetary award programs that recognize accomplishments of individuals and groups of employees. Recognition in the form of merit awards, certificates of achievement, etc. have been found effective in motivating some employees.

See the Bibliography "Issue Area D" in Appendix E for a list of the staff reports and other materials considered.

FINDING

F-26.

A non-monetary awards program which is carefully designed to reward actual achievements has the potential of improving employee morale

and providing additional incentives to increased productivity at little cost, and should consequently be instituted.

RECOMMENDATION

Recommendation 31: Establish a non-monetary award program that recognizes the accomplish-

ments of individuals and groups of employees. (Vote: passed unanimously.)

EMPLOYEE ASSISTANCE ISSUE

Many private sector and some public sector employers have developed employee assistance programs to assist employees with personal crises, reduce the ill effects on employee performance, and protect the employer's investment in its human resources.

In the state of Montana, personal crises that affect performance are handled by each individual agency supervisor and personnel officer. Two major drawbacks of this arrangement are: (1) that while supervisors wish to correct these problems and resulting performance deficiencies, they prefer to avoid first-hand counseling and assistance in order to maintain a professional relationship, (2) most supervisors

and personnel officers are not adequately trained in counseling techniques and available social services, including those needed to adequately diagnose the problem and make an informed referral.

The Personnel Division is often called upon to provide advice on the handling of personal crises but has little developed expertise in this area.

See the Bibliography "Issue Area D" in Appendix E for a list of staff reports and other materials considered.

FINDING

F-27.

An employee assistance program could correct the deficiencies in current efforts to resolve crises-related performance problems, but private sector employers find that such a pro-

gram requires a substantial investment. Consequently, the utility and cost of such a program should be studied further.

RECOMMENDATION

Recommendation 32: Study the need for a state employee assistance program to provide aid to employees and the supervisors of employees whose personal crises affect job performance. The program would address personal crises such as alcohol abuse, emotional stress created by divorce, family deaths, etc. The Personnel Divi-

sion is to prepare a detailed proposal with justification for consideration by the 1985 Legislature. In the interim, the Division is to provide what information and training it can within its existing resources to assist supervisors in dealing with employee assistance problems. (Vote: passed un-animously.)

GRIEVANCE RESOLUTION ISSUE

There are currently diverse grievance appeals procedures for state employees. Some state employees (employees of the Departments of Highways and Fish, Wildlife and Parks) have a statutory right to appeal grievances to the Board of Personnel Appeals. Merit System employees (employees of departments which are required to satisfy federal merit requirements to obtain federal funds—primarily the Department of Social and Rehabilitation Services, the Department of Health and Environmental Sciences, and the Job Service Division) can appeal most grievances to the Merit System Council. All other unorganized state employees have no appeal beyond the intra-agency grievance process.

Intra-agency grievance procedures are established by agency policy in accordance with administrative rules on grievance resolution issued by the Department of Administration, Personnel Division. These administrative rules call for informal procedures to resolve grievances at the lowest level possible and barring such resolution for a hearing by a three member ad hoc panel whose findings are advisory to the agency head.

Most agencies, as well as the Personnel Division, have found ad hoc hearing panels unworkable because hearings officers need some familiarity with administrative procedures as well as knowledge of laws and policies governing personnel administration to be effective.

See the Bibliography "Issue Area E" in Appendix E for a list of the staff reports and other materials considered.

FINDINGS

F-28.

Uniform procedures should be established to quickly and equitably resolve significant griev-

ances which can not be resolved informally.

F-29.

An independent grievance appeals board is a common public sector mechanism for resolving grievances and has the advantage from employees' point of view of providing a final decision by a neutral party rather than the department director who is often involved in grievable actions such as termination. However, the option of establishing an independent board should not be adopted because it suffers several disadvantages:

1. It is costly.
2. It is not needed to protect employee rights. The Montana Administrative Procedures Act automatically gives employees the right to judicial review of an agency head's decision where the decision completes a statutorily provided administrative hearing. Thus, if employees are provided with a statutory right to a hearing under the Montana Administrative Procedures Act as recommended, they first receive a hearing before an impartial independent hearings officer (someone outside the agency), and although the hearings officer's decision is advisory to the agency head, it places considerable pressure on the agency head to adopt it. To do otherwise risks reversal by district court since the employee has the right to appeal the decision into the court system.

While litigation involves some expense and might deter some employees from pursuing grievances, the deterrent effect of this expense is offset by permitting the courts to award costs and attorney's fees to prevailing employees as recommended.

3. An administrative grievance appeals process involving a board is too lengthy—generally six months or more. It generally involves time for both parties to prepare their case, a hearing be-

fore a hearings officer, time for the hearings officer to issue a decision, a period in which either party can file exceptions in effect appealing the hearings officer's decision to the full board, a hearing before the full board, time for the full board to issue a final decision. And, at the end of this period, the Board's decision can be appealed to the courts—further lengthening the process.

F-30.

Until recently, the Merit System Council served three major functions for Merit System agencies (primarily the Department of Social and Rehabilitation Services, the Department of Health and Environmental Sciences and the Employment Security Division) which have been required to be part of the system in order to satisfy federal merit requirements and obtain federal funds. These functions were: (1) central recruitment and screening, (2) issuance of administrative rules governing personnel practices to assure compliance with merit principles, and (3) grievance appeal hearings.

New federal merit rules no longer require special procedures for so called "merit" agencies and were partially enacted to effect cost savings by eliminating the need for dual personnel systems that the previous rules forced many state and local governments to maintain.

In anticipation of these federal changes, the most costly merit system function—central recruitment and screening has been discontinued. The state of Montana should take further advantage of this opportunity to unify and simplify its personnel systems by discontinuing the specialized grievance appeals process in favor of a uniform process and discontinuing special policies and rules for "merit" agencies in favor of uniform policies and rules for all agencies.

RECOMMENDATION

Recommendation 33: Establish a uniform procedure for resolution of significant employee grievances (defined as termination, demotion, suspension or layoff of more than 40 working hours, involuntary transfer to another geographical location and retaliation for filing a grievance or participating in the grievance process) and discontinue specialized procedures as follows:

1. Statutorily require every agency including legislative and judicial agencies to establish a

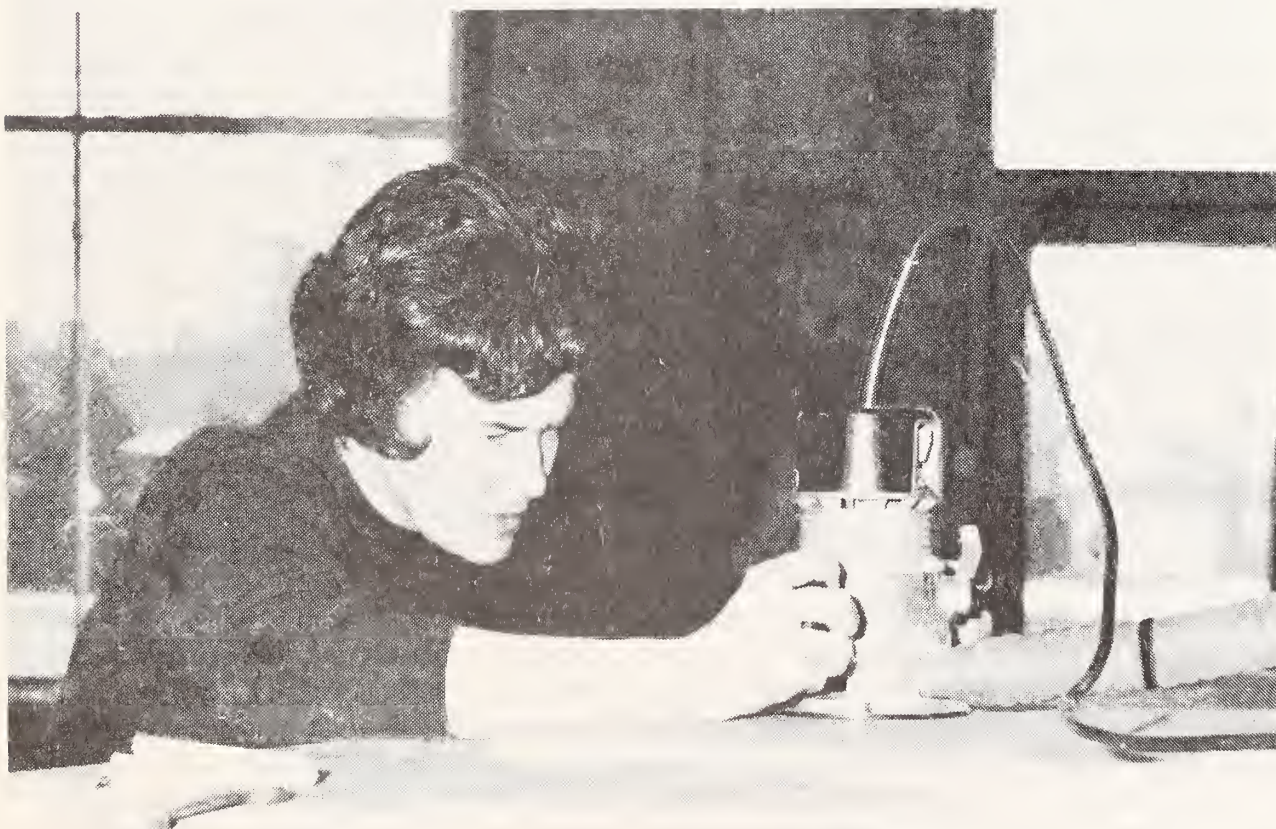
grievance procedure which may be used by all agency employees except probationary, contractual and specified policy-making employees, provided that employees with an applicable negotiated grievance procedure may not pursue a grievance under both procedures.

Agency grievance procedures are to include, at a minimum:

- a. a requirement that the agency provide at least five days prior notice of a grievable agency action, whenever practical;

- b. a requirement that agency action on grievable subjects be consistent with contemporaneous written agency policy;
 - c. a ten, working day period after a grievable act in which employees may file a grievance;
 - d. an opportunity for a grieving employee on his own time to examine relevant documents subject to limits of Article II, section 10 of the State Constitution and to question witnesses and present his views;
 - e. the right of a grieving employee to a hearing consistent with the Montana Administrative Procedures Act conducted by an independent hearings officer who shall issue an advisory decision;
 - f. the right to a written final decision by the chief administrative officer of the employing state agency which is responsive to the issues raised in the grievance and which is provided within 90 days following the filing of the grievance unless the time period is extended by mutual agreement of the agency and grievant;
 - g. authority for the chief administrative officer to remedy a valid grievance. (In the case of alleged procedural errors, the chief administrative officer may require the act to be redone following proper procedures if the errors were prejudicial to the grievant. If the errors were not prejudicial, no remedy need be given.)
2. Statutorily provide employees with the right to enforce statutory grievance rights through a district court of appropriate venue and to be awarded costs and attorney's fees if they prevail.
 3. Abolish the Merit System Council.
 4. Repeal statutory provisions establishing grievance appeal procedures through the Board of Personnel Appeals for employees of the Departments of Highways and Fish, Wildlife and Parks. (Vote: 7-yes, 5-no)
- See proposed implementing legislation, LC0124/01, in Appendix B.

Minority views are presented in Chapter VII.



Routing a sign, Sign Shop, Department of Fish, Wildlife and Parks.

CHAPTER VII

MINORITY REPORT

Minority views are presented below for three recommendations at the request of the minority contingents.

Recommendation 13: Amend the Collective Bargaining for Nurses Act (CBNA) to: (1) establish unfair labor practices for labor organizations representing nurses—as well as for health care facilities, (2) establish procedures for adjudicating unfair labor practice charges consistent with procedures under the Collective Bargaining for Public Employees Act (CBPEA), and (3) make procedures for determining appropriate units and resolving representation questions for nurses more consistent with provisions established by the CBPEA for public employees.

MINORITY VIEW: Opponents of Recommendation 13 generally favored the option of placing nurses under the CBPEA and abolishing the CBNA arguing that the Nurses Act is no longer needed and creates unnecessary confusion and duplication. Other arguments in favor of this minority option were that it creates no ill effects because, while supervisory nurses could legally join a bargaining unit under the Nurses Act but not the CBPEA, none have done so during the 12 years of existence of the Nurses Act, and while private sector nurses who are not covered by the National Labor Relations Act (those employed by a health care facility with annual revenues under \$250,000) could legally organize under the Nurses Act but not under the CBPEA, again, none have done so during the existence of the Nurses Act.

MINORITY MEMBERS: Rep. Francis Bardanouve, Jean Fitzsimmons, Nancy Hanson, Marilyn Miller, and Gary Wicks.

Recommendation 16: Establish a non-base-building pay-for-performance bonus system for all unorganized employees.

MINORITY VIEW: Opponents of this recommendation argued that: (a) pay-for-performance can be expected to generate more animosity and hard feelings than productivity because performance appraisal is never completely objective, (b) the experiences of the City of Great Falls and County of Missoula with performance pay were unfavorable, (c) rank and file members oppose it as demonstrated by letters or petitions from 1,865 organized employees, and (d) pay-for-performance funds could better be spent on making base salaries more competitive or on other benefits such as shift differentials.

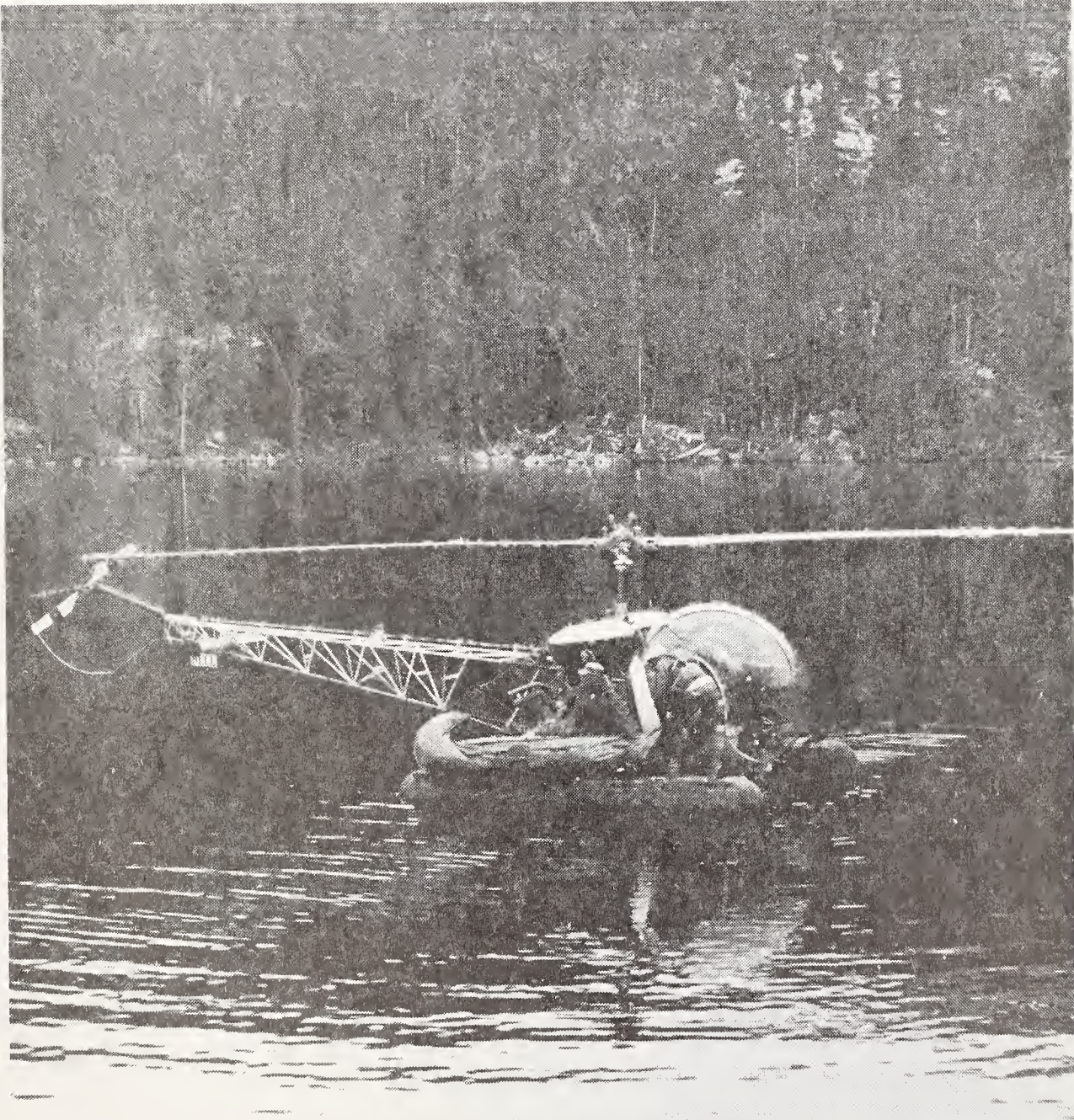
MINORITY MEMBERS: Jerry Driscoll, Tom Schneider, Senator Fred Van Valkenburg, Richard Ferdever.

Recommendation 33: Establish a uniform procedure for resolution of significant employee grievances by: (1) statutorily requiring each agency to establish a grievance procedure with specified features, (2) statutorily provide employees with the right to enforce grievance rights through district court and to be awarded costs and attorney's fees, (3) abolish the Merit System Council, and (4) repeal statutory provisions establishing grievance appeal procedures through the Board of Personnel Appeals for employees of the Departments of Highways and Fish, Wildlife and Parks.

MINORITY VIEW: Some opponents of Recommendation 33 argued against it because it eliminates existing statutory right of appeal to the Board of Personnel Appeals for employees of the Departments of Highways and Fish, Wildlife and Parks and existing appeal procedures through the Merit System Council. Others opposed any procedure that involves an independent hearing, arguing that grievance resolution should be handled internally by each agency unless employees have collectively bargained a grievance arbitration process. Still, others argued that the current diversity in grievance processes creates no real problems and is preferable to either creating a costly grievance board or eliminating existing statutory rights. Some favored extending the statutory right of appeal through the Board of Personnel Appeals currently held by employees of the Departments of Fish, Wildlife and Parks and

Highways to all employees but others argued that the Board's concentration on labor relations should not be diluted—that the Board of Personnel Appeals should be patterned after the National Labor Relations Board. It was also noted that labor law is a special field and should not be applied to grievances by unorganized employees.

MINORITY MEMBERS: Jerry Driscoll, LeRoy Schramm, Richard Ferderer, Senator Fred Van Valkenburg, Tom Schneider.



High mountain lake, fish survey, Department of Fish, Wildlife and Parks.

APPENDIX 'A'

STATE OF MONTANA
OFFICE OF THE GOVERNOR
EXECUTIVE ORDER NO. 25-81

Executive Order Creating the
Personnel and Labor Relations Study Commission

I, TED SCHWINDEN, in accordance with the authority vested in me as Governor of the State of Montana, pursuant to the Constitution and laws of the State of Montana, and specifically pursuant to Chapter 421, Laws of Montana, 1981, do hereby create the Personnel and Labor Relations Study Commission.

I. Purpose

The purpose of the Commission is to study and make recommendations to the Governor and Legislature on methods for improving the personnel and labor relations programs in Montana. Specifically, the Commission shall study and make recommendations on such personnel functions and issues in state government including, but not limited to:

- a. Whether current state employee compensation and classification practices ensure inter-agency quality and serve to attract and retain qualified and competent employees needed by state government.
- b. Whether positive and efficient management consistent with the concept of merit and equitable treatment of employees is fostered by the personnel systems existing in the agencies of state government.
- c. Whether the adoption of more incentives and more opportunities for career development can foster increased employee productivity, initiative and job interest.
- d. Whether the actual operation of the Collective-Bargaining for Public Employees Act (Title 39, Chapter 31, MCA) is workable and accomplishing the purposes of the act.
- e. Whether the state's grievance procedures, including the role of the Board of Personnel Appeals in resolving classification disputes, meet the needs of state employees and managers.

2. Composition

The Commission shall consist of four members of the State Legislature, three representatives of organized labor, three representatives from the private sector, and three employees of the executive branch. I hereby appoint the following persons as members of the commission:

Legislative Branch Commissioners

Representative Francis Bardanouve, Chairman
R. R. 1, Box 24
Harlem, Montana 59826

Senator Fred Van Valkenburg
219 University
Missoula, Montana 59801

Representative Calvin Winslow
1240 Crawford
Billings, Montana 59102

Senator Jan Johnson Wolf
P. O. Box 598
Plains, Montana 59859

Labor Sector Commissioners

Jerry Driscoll
Assistant Business Manager
Laborers' Local Number 98
345 Calhoun Lane
Billings, Montana 59101

Richard Ferderer
P. O. Box 2648
Great Falls, Montana 59401

Tom Schneider
Executive Director
Montana Public Employees' Association
P. O. Box 5600
Helena, Montana 59604

Private Sector Commissioners

Percy Cline, Staff Manager
Mountain Bell
560 North Park Avenue
Helena, Montana 59601

Nancy Hanson
Vice-President for Human Resources
First Northwestern National Bank
175 North 27th
Billings, Montana 59101

Don Robinson, Attorney
Law Firm of Poore, Roth, Robeschon and Robinson
1341 Harrison Avenue
Butte, Montana 59701

Executive Branch Commissioners

LeRoy Schramm
Chief Legal Counsel for the
Office of the Commissioner of Higher Education
33 South Last Chance Gulch
Helena, Montana 59620

Ray Shackleford
Deputy State Superintendent
Office of Public Instruction
Helena, Montana 59620

Gary Wicks, Director
State Highway Department
Highway Building
Helena, Montana 59620

The Commission shall be attached to the Department of Administration for administrative purposes. The Department of Administration, Personnel Division is herein directed to provide staff services to the Commission. I hereby direct all state agencies, boards and state employees to cooperate and furnish whatever information or assistance is requested by the Commission or its representatives in performance of their duties.

3. Report

A final written report, including specific legislative recommendations shall be submitted to the Governor by no later than December 1, 1982.

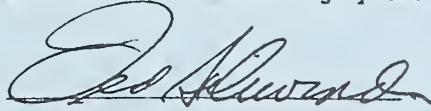
4. Compensation

Each member of the Commission shall receive \$25 per day as compensation for his services for each day spent in the performance of his duties and shall be reimbursed for travel and per diem expenses as provided for in Sections 2-18-501 through 2-18-503, MCA.

5. Duration

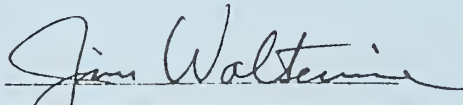
The Commission shall exist until June 30, 1983.

Given under my hand and the
GREAT SEAL OF THE STATE OF
MONTANA this 29th day of October
in the year of our Lord, One Thou-
sand Nine Hundred and Eighty-One.



TED SCHWINDEN, GOVERNOR

Attest:


JIM WALTERMIRE, Secretary of State

APPENDIX

"B"

(3) The testimony taken by the board or its agent shall be reduced to writing and filed with the board. Thereafter, in its discretion the board upon notice may take

1 further testimony or hear argument.

2 (4) If, upon the preponderance of the testimony taken,
3 the board is of the opinion that any person named in the
4 complaint has engaged in or is engaging in an unfair labor
5 practice, it shall state its findings of fact and shall
6 issue and cause to be served on the person an order
7 requiring him to cease and desist from the unfair labor
8 practice and to take such affirmative action, including
9 reinstatement of employees with or without back pay, as will
10 effectuate the policies of this chapter. The order may
11 further require the person to make reports from time to time
12 showing the extent to which he has complied with the order.
13 No order of the board shall require the reinstatement of any
14 individual as an employee who has been suspended or
15 discharged or the payment to him of any back pay if it is
16 found that the individual was suspended or discharged for
17 cause.

18 (5) If, upon the preponderance of the testimony taken,
19 the board is not of the opinion that the person named in the
20 complaint has engaged in or is engaging in the unfair labor
21 practice, then the board shall state its findings of fact
22 and shall issue an order dismissing the complaint.

23 (6) If the evidence is presented before a member of
24 the board or before an examiner, the member or the examiner,
25 as the case may be, shall issue and cause to be served on

1 the parties to the proceeding a proposed decision, together
2 with a recommended order, which shall be filed with the
3 board, and if no exceptions are filed within 20 days after
4 service thereof upon the parties or within such further
5 period as the board may authorize, the recommended order
6 shall become the order of the board. The board shall issue a
7 final order within 5 months after ~~a--complaint--is~~ final
8 briefs are submitted to the hearing officer or, if no briefs
9 are submitted, then within 5 months after the hearing."

-End-

1 _____ PILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE PERSONNEL AND LABOR

4 RELATIONS STUDY COMMISSION

5

6 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE BOARD
7 OF PERSONNEL APPEALS TO INVESTIGATE AND DISMISS COMPLAINTS
8 OF UNFAIR LABOR PRACTICES; AMENDING SECTION 39-31-405, MCA."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 39-31-405, MCA, is amended to read:

12 "39-31-405. Unfair labor practice complaint --

13 investigation -- notice of hearing -- service -- answer. (1)

14 Whenever a complaint is filed alleging that any person has

15 engaged in or is engaging in any such unfair labor practice,

16 the board of any agent designated by the board for such

17 purposes shall issue and cause to be served upon the person

18 a copy of the complaint and provide the person with an

19 opportunity to respond to all charges. After receipt of

20 responses from the charged party, an agent designated by the

21 ~~board for such purposes shall investigate the alleged unfair~~

22 labor_practice.

23 (2) If, after the investigation, the agent designated

24 by the board determines that the charge is without probable

25 merit, the board shall issue and cause to be served upon the

1 complaining party and the person being charged notice of its
2 intention to dismiss the complaint. The dismissal becomes a
3 final order of the board unless either party requests a
4 review of the decision to dismiss the complaint. The request
5 for a review must be made in writing within 10 days of
6 receipt of the notice of intention to dismiss. If a review
7 is requested, the board may uphold its decision to dismiss
8 the complaint or, pursuant to subsection (3), schedule a
9 hearing on the merits. If the board upholds its decision to
10 dismiss the complaint, the dismissal becomes a final order
11 of the board.

12 (3) If after the investigation or after the review
13 provided for in subsection (2), the board determines that
14 there is probable merit for the charge, the board shall
15 issue and cause to be served upon the complaining party and
16 the party charged a notice of hearing before the board, a
17 member thereof, or before a designated agent at a time and
18 place therein fixed, not less than 5 working days after the
19 date of service.

20 (4) If a hearing is to be held, the person upon
21 against whom the charge is served shall file an answer
22 to the complaint."

-End-

1 BILL NO. _____
2 INTRODUCED BY _____
3 BY REQUEST OF THE
4 PERSONNEL AND LABOR RELATIONS STUDY COMMISSION

6 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE
7 GRANDFATHER CLAUSE CONTAINED IN TITLE 39, CHAPTER 31, MCA,
8 COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES, BY PROVIDING
9 THAT COLLECTIVE BARGAINING UNITS RECOGNIZED BY THE
10 GRANDFATHER CLAUSE MAY CONTAIN SUPERVISORY EMPLOYEES,
11 MANAGEMENT OFFICIALS, OR OTHER EMPLOYEES EXCLUDED FROM TITLE
12 39, CHAPTER 31, MCA, ONLY AS LONG AS THOSE EMPLOYEES
13 CONTINUE TO OCCUPY THE POSITIONS THEY OCCUPIED ON JULY 1,
14 1973; AUTHORIZING THE BOARD OF PERSONNEL APPEALS TO MAKE
15 UNIT CLARIFICATIONS OF BARGAINING UNITS RECOGNIZED BY THE
16 GRANDFATHER CLAUSE; AND AMENDING SECTION 39-31-109, MCA."

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19 Section 1. Section 39-31-109, MCA, is amended to read:

20 "39-31-109. Existing collective bargaining agreements
21 not affected. ~~Nothing (1) Except as provided in subsection~~
22 ~~(3), nothing~~ in this chapter shall be construed to remove
23 recognition of established collective bargaining agreements
24 already recognized or in existence prior to ~~the effective~~
25 ~~date of this act July 1, 1973.~~

1 (2) Except as provided in subsection (3), collective
2 bargaining units recognized or in existence prior to July 1,
3 1973, may contain only public employees.

4 (3) If on July 1, 1973, a collective bargaining unit
5 contained a position occupied by an employee who was not a
6 public employee, as defined by 32-31-103, the employee who
7 occupies that position on October 1, 1983, may, if he
8 desires, remain in the bargaining unit as long as he
9 continues to occupy the same position or another position
10 that was contained in the unit on July 1, 1973, unless the
11 board determines through the unit clarification procedure
12 that the employee should be excluded from the unit. If that
13 employee leaves a position of the bargaining unit that was
14 occupied by an employee who was not a public employee on
15 July 1, 1973, his replacement may no longer be included in
16 the bargaining unit, unless the replacement has, since
17 October 1, 1983, continuously occupied one or more
18 positions, all of which were contained in the unit on July
19 1, 1973.

20 (4) The board may grant a petition from a public
21 employer or a bargaining representative for a clarification
22 of a bargaining unit recognized or in existence prior to
23 July 1, 1973. The petition and the unit clarification by the
24 board are subject to procedures established by the board."

-End-

(4) When the member representing a neutral position is unable to participate in a proceeding before the board, an equal number of management and labor members of the board

1 shall select an individual, who shall be a neutral person,
2 to serve in the place of the neutral member in that
3 proceeding and he shall participate in the decision in that
4 proceeding. There shall be only one additional neutral
5 person appointed and serving at any one time. The
6 individual selected is entitled to the same compensation and
7 per diem that members of the board receive.

8 (5) In all proceedings before the board, a favorable
9 vote of at least a majority of a quorum is sufficient to
10 adopt any resolution, motion, or other decision.

11 (6) The board is designated a quasi-judicial board for
12 purposes of 2-15-124."

-End-

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE PERSONNEL AND

4 LABOR RELATIONS STUDY COMMISSION

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE UNFAIR LABOR
7 PRACTICES BY HEALTH CARE FACILITIES AND LABOR ORGANIZATIONS
8 REPRESENTING NURSES; TO ESTABLISH PROCEDURES FOR
9 ADJUDICATING UNFAIR LABOR PRACTICES CHARGES; AND TO RESOLVE
10 APPROPRIATE UNIT AND REPRESENTATION QUESTIONS CONSISTENT
11 WITH THE PUBLIC EMPLOYEES COLLECTIVE BARGAINING PROVISIONS;
12 AMENDING SECTIONS 39-32-102 THROUGH 39-32-106 AND 39-32-109,
13 MCA; AND REPEALING SECTIONS 39-32-107, 39-32-108, AND
14 39-32-111, MCA."

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 Section 1. Section 39-32-102, MCA, is amended to read:

18 "39-32-102. Definitions. As used in this chapter,
19 unless the context clearly requires otherwise, the following
20 definitions apply:

(1) "Appropriate unit" means a homogenous group of employees (as herein defined) of a health care facility having similar duties and qualifications determined pursuant to 39-32-106.

25 (2) "Board" means the board of personnel appeals

1 ~~provided for in 2-15-1705.~~

2 ~~(2)(3)~~ "Employee" means a registered professional or
3 licensed practical nurse performing services for
4 compensation for a health care facility but does not include
5 a member of a religious order assigned to a health care
6 facility by the order as a part of her obligation to the
7 order.

8 ~~(3)(4)~~ "Health care facility" means a hospital or
9 nursing home or other agency or establishment employing
10 employees as defined in this chapter, whether operated
11 publicly or privately, having as one of its principal
12 purposes the preservation of health or the care of sick or
13 infirm individuals or both.

14 ~~(4)(5)~~ "Strike" shall mean any work stoppage caused by
15 the employees of a health care facility, as defined in
16 subsection ~~(3)(4)~~ of this section, that interferes with the
17 operation of the health care facility or affects the care of
18 patients in the health care facility."

19 Section 2. Section 39-32-103, MCA, is amended to read:

20 "39-32-103. Rules. The department---of--labor--and
21 industry--may board shall adopt and promulgate rules as--to
22 times--and--places--for--hearing-and-notice-thereof-so-as-to
23 provide-adequate-notice-and-opportunity-to-be-heard--to--all
24 interested-parties--as-to-elections--and-so-as to carry into
25 effect the provisions of this chapter."

1 Section 3. Section 39-32-104, MCA, is amended to read:

2 "39-32-104. Hearings for determination of appropriate
3 unit. The ~~department-of-labor-and-industry board~~ may set the
4 time and place for hearings for determination of the
5 composition of appropriate units when requested to make such
6 determination under 39-32-106(2) ~~or-39-32-108(1)~~."

7 Section 4. Section 39-32-105, MCA, is amended to read:

8 "39-32-105. General classifications for health care
9 facilities and appropriate units -- petition for removal
10 from general classification. (1) The ~~department-of-labor-and~~
11 ~~industry board~~ may determine, on its own motion by holding
12 hearings or conducting such investigations as it thinks
13 necessary, general classifications for health care
14 facilities and appropriate units.

15 (2) When such determination has been made hereunder
16 and when an application has been made by a health care
17 facility or an employee organization for a specific
18 determination as to it, the ~~department board~~ may make such
19 determination on the basis of such general classification.

20 (3) The health care facility or employee organization
21 may, within 30 days after notice to it of such
22 determination, file a request for a hearing upon written
23 petition which shall set forth the facts which it believes
24 remove it from such general classification, and hearing
25 shall be held on such petition."

1 Section 5. Section 39-32-106, MCA, is amended to read:

2 "39-32-106. Determination of appropriate bargaining
3 unit. (1) The composition of an appropriate unit in a health
4 care facility, for purposes of this law, may be determined
5 by mutual consent between such facility and the employees
6 thereof.

7 (2) In the event no such mutual consent is available,
8 then either the facility or representatives of employees may
9 apply to the ~~department-of-labor-and-industry board~~ and said
10 ~~department board~~, through a duly designated agent, shall
11 make a determination of the composition of such an
12 appropriate unit.

13 (3) In determining such appropriate unit, professional
14 employees may not be included in the same unit with
15 nonprofessional employees unless a majority of professional
16 employees in a proposed unit desire such inclusion. Weight
17 shall be accorded similarity of duties, licensure, and
18 conditions of employment, among other relevant factors, in
19 determining an appropriate unit."

20 Section 6. Section 39-32-109, MCA, is amended to read:

21 "39-32-109. ~~Improper-employment-practices Unfair-labor~~
22 ~~practices-of-health-care-facility~~. It is an ~~improper~~
23 ~~employment unfair-labor~~ practice for a health care facility
24 to do one or more of the following:

25 (1) interfere with or restrain or coerce employees in

1 any manner in the exercise of their right of
2 self-organization;

3 (2) initiate, create, dominate, contribute to, or
4 interfere with the formation or administration of any
5 employee organization that has collective bargaining as one
6 of its principal functions;

7 (3) discriminate in regard to hire terms or conditions
8 of employment when a purpose of such is to discourage
9 membership in an employee organization that has collective
10 bargaining as one of its principal functions;

11 (4) refuse to meet and bargain in good faith with the
12 duly designated representatives of an appropriate bargaining
13 unit of its employees. For the purpose of this subsection,
14 it is a requirement of bargaining in good faith that the
15 parties be willing to reduce in writing and have their
16 representative sign any agreement arrived at through
17 negotiations and discussion.

18 (5) unilaterally exclude from work or prevent from
19 working or discharge any one or more employees when the
20 purpose of such action is in whole or in part to interfere
21 with or coerce or intimidate an employee in the exercise of
22 rights assured in this law."

23 NEW SECTION. Section 7. Unfair labor practices of
24 labor organization. It is an unfair labor practice for a
25 labor organization or its agents to:

1 (1) restrain or coerce employees in the exercise of
2 the right to:

3 (a) form, join, or assist any labor organization;

4 (b) bargain collectively through representatives of
5 their own choosing; or

6 (c) engage in other concerted activities for the
7 purpose of collective bargaining or other mutual aid or
8 protection;

9 (2) restrain or coerce an employer in the selection of
10 his representative for the purpose of collective bargaining
11 or the adjustment of grievances;

12 (3) refuse to bargain collectively in good faith with
13 an employer if it has been designated as the exclusive
14 representative of employees;

15 (4) use agency shop fees for contributions to
16 political candidates or parties at state or local levels.

17 ~~NEW_SECTION.~~ Section 8. Adjudication of unfair labor
18 practices complaints. Violations of 39-32-109 or [section 7]
19 are remediable by the board, and board orders are
20 enforceable and reviewable by the court in the same manner
21 as provided for in Title 39, chapter 31, part 4.

22 ~~NEW_SECTION.~~ Section 9. Representation questions
23 decided by the board. Representation questions shall be
24 decided by the board in the same manner as provided for in
25 39-31-207 through 39-31-210.

1 NEW_SECTION. Section 10. Subpoena power. The board
2 has the same power to subpoena witnesses and administer
3 oaths and affirmations under this chapter as it does under
4 Title 39, chapter 31, and the provisions of 39-31-106 and
5 39-31-107 are incorporated by reference into this chapter.

6 NEW_SECTION. Section 11. Codification instruction.
7 Sections 7 through 10 are intended to be codified as an
8 integral part of Title 39, chapter 32, and the provisions of
9 Title 39, chapter 32, apply to sections 7 through 10.

10 NEW_SECTION. Section 12. Repealer. Sections
11 39-32-107, 39-32-108, and 39-32-111, MCA, are repealed.

-End-

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE PERSONNEL AND LABOR RELATIONS

4 STUDY COMMISSION

5

6 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PUBLIC
7 EMPLOYER AND A LABOR ORGANIZATION TO UTILIZE MEDIATION
8 BEFORE TAKING ANY CONCERTED ACTION; PROVIDING FOR INJUNCTIVE
9 RELIEF; AND AMENDING SECTION 39-31-307, MCA."

10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 39-31-307, MCA, is amended to read:

13 "39-31-307. Mediation of disputes. (1) If, after--a
14 ~~reasonable-period-of~~ during negotiation over the terms of an
15 agreement or upon expiration of an existing collective
16 bargaining agreement, a dispute concerning the collective
17 bargaining agreement exists between the public employer and
18 a labor organization, one_of the parties shall request
19 mediation appointment_of_a mediator_and_the parties shall
20 use mediation as provided for under this chapter prior to
21 taking any form of concerted action.

22 (2) For purposes of this section only, "concerted
23 action" means a strike, lockout, concerted refusal to work,
24 or picketing that results in a concerted refusal to work at
25 any public place of employment.

1 (3) Prior to engaging in any concerted action, a party
2 must give notice in writing to the other party and to the
3 board of its intention to engage in such action. The notice
4 must be given not less than 120 hours prior to such action
5 and must state the time and date that the concerted action
6 will commence. The notice may only be given following
7 mediation and once the notice is given, the time and date of
8 commencement may be extended by written agreement of both
9 parties.

10 (4) Upon application by a party to a labor dispute
11 made to a district court in the county in which a labor
12 dispute has occurred, alleging that the other party has
13 engaged in any form of concerted action in violation of the
14 provisions of this section, the district court shall enjoin
15 such activity and order the parties to comply with the terms
16 and provisions of this section. Upon compliance with this
17 section, the injunction shall, upon the request of either
18 party, be dissolved."

-End-

1 ----- BILL NO. -----
2 INTRODUCED BY -----
3 BY REQUEST OF THE PERSONNEL AND LABOR RELATIONS
4 STUDY COMMISSION

6 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE
7 DEPARTMENT OF LABOR AND INDUSTRY TO DEFER TO THE BOARD OF
8 PERSONNEL APPEALS OR THE NATIONAL LABOR RELATIONS BOARD FOR
9 A DETERMINATION OF WHETHER THE EMPLOYER OF AN APPLICANT FOR
10 UNEMPLOYMENT BENEFITS COMMITTED AN UNFAIR LABOR PRACTICE
11 RESULTING IN A LABOR DISPUTE, WORK STOPPAGE, AND THE
12 APPLICANT'S UNEMPLOYMENT FOR PURPOSES OF DECIDING WHETHER
13 THE APPLICANT IS ENTITLED TO BENEFITS; AMENDING SECTION
14 39-51-2305, MCA."

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 Section 1. Section 39-51-2305, MCA, is amended to
18 read:

19 "39-51-2305. Disqualification when unemployment due to
20 stoppage of work. (1) Effective April 1, 1977, an individual
21 shall be disqualified for benefits for any week with respect
22 to which the department finds that his total unemployment is
23 due to a stoppage of work which exists because of a labor
24 dispute at the factory, establishment, or other premises at
25 which he is or was last employed, provided that this

1 subsection shall not apply if it is shown to the
2 satisfaction of the department that:

3 (a) he is not participating in or financing or
4 directly interested in the labor dispute which caused the
5 stoppage of work; and

6 (b) he does not belong to a grade or class of workers
7 of which, immediately before the commencement of the
8 stoppage, there were members employed at the premises at
9 which the stoppage occurs, any of whom are participating in
10 or financing or directly interested in the dispute.

11 (2) If in any case separate branches of work which are
12 commonly conducted as separate businesses in separate
13 premises are conducted in separate departments of the same
14 premises, each such department shall, for the purpose of
15 this section, be deemed to be a separate factory,
16 establishment, or other premises.

17 (3) ~~If A labor dispute does not render the worker~~
18 ~~ineligible for benefits if:~~

19 ~~(a) such labor dispute is determined by the board of~~
20 ~~personnel appeals under 39-31-401 through 39-31-402,~~
21 ~~39-32-102, and 39-32-111 or by the national labor relations~~
22 ~~board under 29 U.S.C. sections 151 through 168 to be caused~~
23 ~~by an unfair labor practice of the employer; or~~

24 ~~(b) the department, upon investigation, shall find~~
25 ~~finds that such labor dispute is caused by the failure or~~

1 refusal of any employer to conform to the provisions of any
2 law pertaining to hours, wages, or other conditions of work;

3 (ii) of the state wherein the labor dispute occurs,
4 except 39-31-401 through 39-31-409, 39-32-109, or 39-32-111;
5 or

6 (iii) of the United States pertaining to collective
7 bargaining, hours, wages, or other conditions of work,
8 except 29 U.S.C. sections 151 through 168 such labor dispute
9 shall not render the workers ineligible for benefits."

-End-

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE PERSONNEL AND LABOR RELATIONS

4 STUDY COMMISSION

5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A JOINT
7 LEGISLATIVE COMMITTEE ON EMPLOYEE COMPENSATION."

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Joint committee on employee compensation.

11 (1) There is a joint committee on employee compensation that
12 is a permanent joint committee of the legislature.

13 (2) The joint committee on employee compensation
14 consists of:

15 (a) one member appointed by the majority leader of the
16 house;

17 (b) one member appointed by the majority leader of the
18 senate;

19 (c) one member appointed by the minority leader of the
20 house;

21 (d) one member appointed by the minority leader of the
22 senate;

23 (e) the chairman of the senate finance and claims
24 committee;

25 (f) the chairman of the house appropriations

1 committee;

2 (g) the speaker of the house;

3 (h) the president of the senate; and

4 (i) two additional members, one appointed by the
5 senate committee on committees and one appointed by the
6 house appropriations committee, unless five or more of the
7 first eight members are of the same political party, in
8 which case one of the two additional members shall be
9 appointed by the minority leader of the house and one by the
10 minority leader of the senate.

11 (3) The members shall be appointed in the presession
12 caucus provided in 5-2-201 through 5-2-203.

13 (4) Appointments are for 2 years, and a member of the
14 committee shall serve until his term of office as a
15 legislator expires or until his successor is appointed,
16 whichever occurs first.

17 (5) The committee shall elect one of its members as
18 chairman and such other officers as it considers necessary.

19 (6) Members of the committee are entitled to receive
20 compensation and expenses as provided in 5-2-302.

21 (7) If a vacancy occurs on the committee when the
22 legislature is not in session, the remaining members shall
23 select a member to complete the unexpired term who is of the
24 same political party as the member who vacated the position.

25 Section 2. Powers and duties of committee. The joint

1 committee on employee compensation provided for in [section
2 1] may:

3 (1) adopt rules to govern its proceedings and meet as
4 often as necessary upon the call of the chairman or a
5 majority of the members;

6 (2) consult with executive branch negotiators in the
7 form and detail determined by the committee regarding
8 substantial changes in any existing contract provision with
9 an economic impact or new provision with an economic impact;

10 (3) approve or disapprove economic settlements subject
11 to final approval by the full legislature; and

12 (4) approve or disapprove the compensation and benefit
13 plans for unorganized employees proposed by the department
14 of administration subject to final approval by the full
15 legislature.

-End-

----- BILL NO. -----

INTRODUCED BY -----

BY REQUEST OF THE PERSONNEL AND LABOR

RELATIONS STUDY COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE
ISSUANCE OF AN INJUNCTION AGAINST PUBLIC EMPLOYEES ENGAGED
IN A STRIKE OR OTHER CONCERTED INTERRUPTION OF WORK THAT HAS
AN IMPACT ON ESSENTIAL PUBLIC SERVICE; AND REQUIRING THE
PARTIES TO SUBMIT TO FINAL-OFFER ARBITRATION THAT IS BINDING
ON THE APPROPRIATING AUTHORITY IF AN INJUNCTION IS ISSUED."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Strikes endangering essential public
service. After a strike, work stoppage, or other concerted
interruption of work or refusal to work occurs that has an
impact upon essential public services, the public employer
may, upon filing a verified application for injunctive
relief in a district court in the county in which the action
has occurred, seek an injunction against the action.

Section 2. Findings necessary before injunction
issued. (1) The court may issue an injunction if it finds
that continuation of the action that the public employer
seeks to enjoin would pose an imminent danger to the health,
safety, or welfare of the public. In making such a finding,

1 the court shall consider:

2 (a) the kind and nature of the public services that
3 are being interrupted or not delivered;

4 (b) the status and circumstances of the citizens or
5 groups of citizens whose health, safety, or welfare is
6 adversely affected by continuation of the action;

7 (c) the duration of the action;

8 (d) the ability of the public employer to provide, in
9 whole or in reasonable part, the services through other
10 employees, including supervisory employees, or through other
11 means;

12 (e) the participation of other employees, not directly
13 involved in the action, and the degree to which their
14 participation, or lack of same, has affected other services
15 not provided by the employees directly involved in the
16 action; and

17 (f) if the action affects public education, whether
18 the duration of the action has endangered the ability of the
19 school district to comply with statutory requirements to
20 provide a minimum number of days of education within a
21 required period of time.

22 (2) The court may not enjoin any action based solely
23 upon the fact that the action has caused inconvenience or
24 discomfort to the public.

25 Section 3. Final-offer arbitration -- designation of

1 arbitration. (1) If the court issues an injunction, the
2 injunctive order must contain a requirement that the parties
3 shall submit to compulsory final-offer arbitration all
4 unresolved issues between the parties. The decision of the
5 arbitrator is binding upon the parties and upon the
6 governing body responsible for appropriating funds.

7 (2) For purposes of this section, "final-offer
8 arbitration" means arbitration in which the arbitrator is
9 required to select only one of the final offers submitted by
10 the parties to the arbitrator.

11 (3) The parties shall decide upon the procedure by
12 which the arbitrator is selected. If the parties do not
13 agree upon the procedure for selection of the arbitrator,
14 the arbitrator shall be selected as provided in 39-34-102.

15 Section 4. Prohibited conditions for issuance of
16 injunction. The court may not condition issuance of an
17 injunction upon matters relating to the positions of the
18 parties, the nature or history of the bargaining process, or
19 the pendency of any unfair labor practice charges or
20 allegations made before the board, unless the board has made
21 a final order as to any such charges or allegations.

22 Section 5. Codification instruction. Sections 1
23 through 4 are intended to be codified as an integral part of
24 Title 39, chapter 31, and the provisions of Title 39,
25 chapter 31, apply to sections 1 through 4.

1 Section 6. Severability. If a part of this act is
2 invalid, all valid parts that are severable from the invalid
3 part remain in effect. If a part of this act is invalid in
4 one or more of its applications, the part remains in effect
5 in all valid applications that are severable from the
6 invalid applications.

-End-

1 _____ BILL NO. _____
2 INTRODUCED BY _____
3 BY REQUEST OF THE PERSONNEL AND LABOR RELATIONS
4 STUDY COMMISSION

6 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING EACH PARTY
7 TO AN UNFAIR LABOR PRACTICE PROCEEDING TO DISQUALIFY WITHOUT
8 CAUSE ONE HEARING EXAMINER DESIGNATED TO HEAR THE MATTER."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Disqualification of hearing examiner. Each
12 party to an unfair labor practice proceeding has the right
13 to disqualify, without cause, the hearing examiner
14 designated by the board to hear the complaint. The right may
15 be exercised only once and must be exercised within 5 days
16 from the time a party is notified by the board of the
17 hearing examiner designated to hear the matter. The exercise
18 of this right is in addition to any rights a party has to
19 disqualify a hearing examiner under 2-4-611.

20 Section 2. Codification instruction. Section 1 is
21 intended to be codified as an integral part of Title 39,
22 chapter 31, and the provisions of Title 39, chapter 31,
23 apply to section 1.

- End -

----- BILL NO. -----

INTRODUCED BY -----

BY REQUEST OF THE PERSONNEL AND LABOR RELATIONS

STUDY COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A UNIFORM GRIEVANCE PROCESS FOR STATE EMPLOYEES; TO DISCONTINUE EMPLOYEE GRIEVANCE APPEAL FUNCTIONS OF THE BOARD OF PERSONNEL APPEALS FOR THE DEPARTMENTS OF HIGHWAYS AND FISH, WILDLIFE, AND PARKS; TO DISCONTINUE THE MERIT SYSTEM COUNCIL; AMENDING SECTION 87-1-403, MCA; REPEALING SECTIONS 2-15-1006, 2-18-105, 2-18-1001 THROUGH 2-18-1003, AND 87-1-205, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Policy statement. It is the policy of this state to grant employees a grievance procedure designed to secure certain basic procedural rights as delineated in [sections 1 through 6].

NEW_SECTION. Section 2. Definitions. For purposes of [sections 1 through 6], the following definitions apply:

(1) "Employee" means any state employee who has been employed for 6 calendar months except:

(a) elected officials;

(b) personal staff members of elected officials

1 exempted from the classification system under 2-18-104;

2 (c) members of boards and commissions appointed by the
3 governor or the legislature or by other state officials;

4 (d) officers or members of the militia;

5 (e) agency heads appointed by the governor;

6 (f) a policymaking executive branch employee in the
7 position of deputy director, deputy commissioner, or
8 division administrator;

9 (g) academic and professional administrative personnel
10 with individual contracts under the authority of the board
11 of regents of higher education;

12 (h) a policymaking employee of the judicial branch
13 designated as such by the chief justice of the Montana
14 supreme court or a personal law clerk of the judicial
15 branch;

16 (i) policymaking employees of the legislative branch
17 designated as such by the appropriate legislative committee
18 or members of the immediate staffs of the majority and
19 minority leadership of the legislature; or

20 (j) academic and professional administrative personnel
21 who have entered into individual contracts with the state
22 school for the deaf and blind under the authority of the
23 state board of public education.

24 (2) "Grievable subject" means an agency action
25 involving the termination, demotion, suspension, or layoff

1 for more than 40 working hours of an employee, or the
2 involuntary transfer of an employee to another geographical
3 location, or retaliation taken against an employee for
4 participation in or filing a grievance under the procedures
5 of [sections 1 through 6].

6 (3) "Grievance" means an employee complaint involving
7 a grievable subject.

8 ~~NEW SECTION.~~ Section 3. Grievance procedure. Every
9 agency employing an employee shall establish, at a minimum,
10 rules consistent with the following provisions:

11 (1) Whenever practical, prior notice of at least 5
12 days must be given to each affected employee with regard to
13 an agency action on a grievable subject.

14 (2) Agency action on a grievable subject must be
15 consistent with contemporaneous written agency policy.

16 (3) A grievance may be filed anytime within 10 working
17 days of the grievable incident. A grievance is considered
18 filed when it is reduced to writing by the employee and
19 presented to the employee's immediate supervisor or other
20 responsible agency official.

21 (4) An employee who has filed a grievance is entitled
22 to a hearing under Title 2, chapter 4, part 6. The hearing
23 examiner appointed by the agency must be a neutral party.
24 The employee must be given the opportunity on his own time
25 to examine relevant documents, present his views, and

1 question witnesses on matters relating to a filed grievance.

2 (5) The decision of the hearing officer is advisory to
3 the chief administrative officer of the employing state
4 agency who shall make the final decision on the grievance.

5 (6) The final decision must be in writing and must be
6 responsive to the issues properly raised in the filed
7 grievance.

8 (7) The procedure for handling grievances must be
9 designed so that a final decision is made no later than 90
10 days following the filing of the grievance, except that this
11 time may be extended by mutual agreement of the agency and
12 the grievant.

13 ~~NEW SECTION.~~ Section 4. Authority of chief
14 administrative officer to remedy a grievance -- remedy for
15 procedural errors. The chief administrative officer of an
16 agency may remedy a valid grievance in any reasonable
17 manner. In the case of procedural errors, the chief
18 administrative officer may require the act to be redone
19 following proper procedures or, if the error was not
20 prejudicial to the grievant, the error may be disregarded
21 and no remedy given.

22 ~~NEW SECTION.~~ Section 5. Judicial review -- court
23 costs. (1) The rights guaranteed by [sections 1 through 6]
24 may be enforced by suit in a district court of appropriate
25 venue, and the decision of the chief administrative officer

1 is reviewable under the provisions of Title 2, chapter 4,
2 part 7.

3 (2) The court may grant costs and attorney's fees to a
4 prevailing plaintiff.

5 NEW SECTION. Section 6. Grievance procedure and
6 negotiated procedure mutually exclusive. Nothing in
7 [sections 1 through 6] limits the rights of exclusive
8 representatives and employers under 39-31-310, except that
9 no grievance may be pursued under both [sections 1 through
10 6] and the procedures negotiated by an exclusive
11 representative. The filing of a grievance under one
12 procedure constitutes a waiver of the right to pursue the
13 matter under the other procedure. However, after filing and
14 upon mutual agreement of all parties, a grievance may be
15 transferred from one process to the other.

16 Section 7. Section 87-1-403, MCA, is amended to read:

17 "87-1-403. Regulation of employees by director. {t}
18 ~~The--director--may--suspend--without-pay--reduce--in--rank--or~~
19 ~~remove--any--employee--at--any--time--for--cause--providing--that~~
20 ~~any--person--who--has--been--continuously--employed--for--1--year--or~~
21 ~~more--immediately--preceding--any--suspension--or--discharge--may~~
22 ~~demand--and--receive--a--hearing--before--the--department--on--the~~
23 ~~charges--filed--The--action--of--the--department--resulting--from~~
24 ~~such--a--hearing--constitutes--final--administrative--action--for~~
25 ~~purposes--of--filing--a--grievance--with--the--board--of--personnel~~

~~appeals-as-provided-in-87-1-205.~~

{2} The director shall rate all employees on the basis of merit and efficiency in accordance with rules adopted by the department to secure a proper rating of each person employed. The salaries of employees shall be fixed by the department, and travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, shall be allowed employees while upon official business away from designated headquarters."

NEW_SECTION. Section 8. Repealer. Sections 2-15-1006, 2-18-105, 2-18-1001 through 2-18-1003, and 87-1-205, MCA, are repealed.

NEW_SECTION. Section 9. Codification instruction. Sections 1 through 6 are intended to be codified as a part of Title 2, chapter 18, part 10, and definitions of 2-18-101 apply to sections 1 through 6.

NEW_SECTION. Section 10. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW_SECTION. Section 11. Effective date. This act is effective on July 1, 1983.

-End-

APPENDIX C

RECOMMENDATION VOTES

<u>No.</u>	<u>Aye</u>	<u>Nay</u>	<u>Absent</u>
<u>1</u>	Unanimous		Wolf Wicks
<u>2</u>	Bardanoue Van Valkenburg Driscoll Fitzsimmons Hanson Miller Robinson Schramm	Schneider Ferderer Winslow	Wolf Wicks
<u>3</u>	Unanimous		Wolf
<u>4</u>	Unanimous		Wolf
<u>5</u>	Bardanoue Van Valkenburg Winslow Driscoll Ferderer Schneider Fitzsimmons Hanson Miller Schramm Wicks	Robinson	Wolf
<u>6</u>	Unanimous		Wolf
<u>7</u>	Unanimous		Wolf
<u>8</u>	Bardanoue Winslow Driscoll Ferderer Schneider Fitzsimmons Hanson Miller Robinson Schramm	Van Valkenburg Wicks	Wolf

<u>No.</u>	<u>Aye</u>	<u>Nay</u>	<u>Absent</u>
<u>9</u>	Bardanoue Van Valkenburg Winslow Robinson Fitzsimmons Hanson Miller Schramm Wicks	Driscoll Ferderer Schneider	Wolf
<u>10</u>	Bardanoue Van Valkenburg Winslow Fitzsimmons Hanson Miller Robinsons	Driscoll Ferderer Schneider Schramm Wicks	Wolf
<u>11</u>	Unanimous		Wolf
<u>12</u>	Bardanoue Van Valkenburg Winslow Fitzsimmons Hanson Miller Robinson Schramm Wicks	Driscoll Ferderer Schneider	Wolf
<u>13</u>	Van Valkenburg Winslow Driscoll Ferderer Schneider Robinson Schramm	Bardanoue Fitzsimmons Hanson Miller Wicks	Wolf
<u>14</u>	Bardanoue Winslow Ferderer Schneider Fitzsimmons Hanson Miller Robinson Schramm Wicks	Van Valkenburg Driscoll	Wolf

<u>No.</u>	<u>Aye</u>	<u>Nay</u>	<u>Absent</u>
<u>15</u>	Unanimous		Wolf
<u>16</u>	Bardanoue Winslow Wicks Fitzsimmons Hanson Miller Robinson Schramm	Van Valkenburg Driscoll Ferderer Schneider	Wolf
<u>17</u>	Unanimous		Wolf
<u>18, 19, 20, 21, 22, 23</u>	Unanimous		Wolf
<u>24, 25, 26, 27</u>	Unanimous		Wolf
<u>28, 29, 30, 31</u>	Unanimous		Wolf
<u>32</u>	Unanimous		Wolf
<u>33</u>	Bardanoue Winslow Fitzsimmons Hanson Miller Robinson Wicks	Van Valkenburg Driscoll Ferderer Schneider Schramm	Wolf

DEPARTMENT OF ADMINISTRATION
DIRECTOR'S OFFICE

TED SCHWINDEN, GOVERNOR

MITCHELL BUILDING

STATE OF MONTANA

(406) 449-2032

HELENA, MONTANA 59620

May 21, 1982

Representative Francis Bardanouve
Chairman, Personnel and Labor
Relations Study Commission
R.R. 1, Box 24
Harlem, MT 59826

Dear Representative Bardanouve:

On Tuesday, June 1, 1982, the Study Commission will begin to formulate recommendations to the Governor and the Legislature regarding the collective bargaining responsibilities of the legislative and executive branches of state government. Before you conclude your deliberations on this matter, I want to briefly outline some things I think the Study Commission should consider.

It has been pointed out by several people testifying before the Commission that the way to a successful collective bargaining process is good communication. My personal experience during the last session, the expert testimony presented to the Study Commission, and relevant literature on the subject of state labor relations suggest that the success of the process, regardless of the structure used, depends upon consistent and credible communication between all parties. As one party to this relationship, the executive branch through the Department of Administration, intends to take several steps this year that I believe will substantially improve the communication between the executive and legislative branches of state government regarding labor negotiations, state employee compensation issues, and negotiated labor contracts settlements. I believe it is crucial for the department to keep the legislative leadership of both political parties in both houses of the state legislature informed about collective bargaining issues.

I intend to have the Personnel Division provide early and periodic briefings on the conduct and progress of collective bargaining this year for the members of the legislative leadership. At the very least, I think it would be helpful to plan for an initial briefing before collective bargaining gets under way, a second briefing about midway through the process, and a briefing on the conclusion of bargaining, after agreements have been reached, to review the elements of the negotiated settlements prior to the beginning of the legislative session and the introduction of appropriate legislation.

In the Fall of 1982, the newly elected legislative leadership could appoint a select committee such as the Select Committee on State Employee Pay, and authorize members to meet before the session (as has been the practice for members of the legislative fiscal committee for the past few sessions.) This

Select Committee could receive briefings on collective bargaining issues, progress and settlements. Briefings for legislative leaders and Select Committee members would review the broad parameters set for the negotiations. Information could be confined to the progress of negotiations and a brief overview of the status of offers and counteroffers.

The leadership would be notified of "substantial changes" under discussion regarding wages, employee benefits, personnel management and contract provisions with program policy implications. No attempt would be made to outline the details of each contract and each negotiation in progress. The emphasis would be upon the broad parameters, progress to date, and the potential fiscal ramifications of proposed settlements.

By implementing such a procedure this year, the communication and liaison between the Department of Administration and the legislative leadership and their designated representatives responsible for state pay and labor relations issues would be improved over past sessions. These leaders would be kept informed about the important collective bargaining issues prior to and during bargaining.

An earlier introduction of the pay bill would also improve the Legislature's review of state compensation issues and the results of the collective bargaining process. I will seek to insure that appropriate legislation is prepared for early introduction in the 48th Legislature to allow for the maximum amount of time for consideration by the Legislature.

Finally, I will work with the Office of Budget and Program Planning and the Office of the Legislative Fiscal Analyst to set up a reliable system to calculate the cost of the negotiated settlement in a manner that can be independently verified by all parties.

Much confusion over the cost of the pay plan and negotiated settlements can be eliminated by prior planning and general agreement by the department, the LFA and OBPP regarding the method of calculation by which any settlement and the resultant pay plan could be costed out.

All of the actions outlined above are designed to improve communication between the executive and legislative branches of state government regarding the conduct and products of collective bargaining. If such an improved liaison can be put into place, I believe many communication problems of the past can be mitigated.

I believe this approach will correct the major concerns cited at the Commission hearing and should be tried before adopting a totally new system such as used by the states of Wisconsin and Minnesota.

Sincerely,



MORRIS L. BRUSETT
Director

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